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### **SPPRA CIRCULAR NO.: 1/2016**

**ADDRESSED TO:** TENDER BOARDS, CONTROLLING OFFICERS,  
AND CHIEF EXECUTIVE OFFICERS OF  
PROCURING AND REQUESTING ENTITIES

**SUBJECT:** PUBLIC PROCUREMENT PROCEDURES

**EFFECTIVE DATE:** 24 FEBRUARY 2016

**STATUTORY  
REFERENCE:** SECTION 66 OF THE PUBLIC PROCUREMENT  
ACT, 2011

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1. This SPPRA Circular has been issued in terms of Section 66 of the Public Procurement Act, 2011, which provides as follows:

*Section 66:- "The Agency may issue public procurement manuals, circulars and instructions to provide further guidance on the interpretation and application of this Act and public procurement regulations issued under this Act."*

2. For effective implementation of the Public Procurement Act, 2011, the Agency hereby issues the attached Public Procurement Procedures, pending full passage of the Public Procurement Regulations which are currently in draft form.
3. These Public Procurement Procedures shall be repealed by the Public Procurement Regulations, which shall be promulgated in terms of section 65 of the Public Procurement Act, 2011.
4. This SPPRA Circular serves as an instruction to the Government Tender Board, Entity Tender Boards, procuring entities, and requesting entities.

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**B.J. Motsa**

**EXECUTIVE DIRECTOR**

**SWAZILAND PUBLIC PROCUREMENT REGULATORY AGENCY**

# **PUBLIC PROCUREMENT PROCEDURES**

By the  
Swaziland Public Procurement Regulatory Agency

24<sup>th</sup> February, 2016

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Swaziland Public Procurement Regulatory Agency

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Government of the Kingdom of Swaziland

**Public Procurement Procedures**

These Public Procurement Procedures are issued in accordance with the Terms of Section 66 of the Public Procurement Act, 2011 (hereinafter referred as the “Act”).

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## **PART 1**

### **GENERAL**

#### **1. Citation and Commencement**

- (1) These procedures may be cited as the Public Procurement Procedures, 2016, and shall come into operation on such date as the Agency may, by issue of a Circular, determine.

#### **2. Application**

- (1) Subject to sub-paragraph (2), these procedures shall apply to-
  - (a) all public procurement of goods, works and non-consultancy services undertaken by a procuring entity except where the context provide otherwise in which case the provisions of the Act shall prevail;
  - (b) selection and employment of consultants;
  - (c) disposal of public assets by tender; and
  - (d) procurement under public private partnership.
- (2) These procedures shall not apply to disposal of public assets by other methods.

#### **3. Definitions**

- (1) For the purpose of these procedures and unless the context otherwise requires, the following definitions shall apply -
  - (a) “agency” means the Swaziland Public Procurement Regulatory Agency established in accordance with the provisions of section 9 of the Act;
  - (b) “applicant” means a person submitting an application to pre-qualify or an expression of interest;
  - (c) “approvals authority” means the body or individual with authority to grant prior authorisation of certain key steps in the procurement process in accordance with paragraph 18 and the levels of authority established in accordance with section 27(3) of the Act;
  - (d) “close relative” means a parent, a spouse, a child, a sibling, or a parent, child or sibling of a spouse;
  - (e) “coercive practices” means harming or threatening to harm, directly or indirectly, a person, or the property of that person, so as to influence participation or a decision in a procurement process or affect the execution of a contract;
  - (f) “collusive practices” means a scheme or arrangement between two or more tenderers, with or without the knowledge of the procuring entity, designed to establish tender prices at an artificial, or non-competitive levels;
  - (g) “consulting services” means services of an intellectual or advisory nature, including the delivery of reports, drawings or designs and includes architectural or engineering design or supervision, accountancy, auditing, financial services, procurement services, training and capacity building services, management advice, policy studies and advice, assistance with institutional reforms and software development;
  - (h) “contract” means an agreement between a procuring entity and a supplier for the provision of goods, works or services;

- (i) “controlling officer” means an officer designated by the Minister and a Chief Executive Officer in terms of the Act;
- (j) “corrupt practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public officer or politician in the procurement process or in contract execution;
- (k) “day” means calendar day unless otherwise specified as working day;
- (l) “foreign tenderer or supplier” means a tenderer or supplier who is not licensed to undertake business activities in Swaziland;
- (m) “framework contract” means a contractual arrangement which allows a procuring entity to procure goods, services or works that are needed continuously or repeatedly at an agreed price over an agreed period of time, through placement of a number of orders;
- (n) “fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
- (o) “goods” means objects of every kind and description, including raw materials, products and equipment, objects in solid, liquid or gaseous form, and electricity, and includes works and services incidental to the supply of the goods if the value of those incidental works and services does not exceed that of the goods themselves;
- (p) “invitation document” means a tender document, request for proposals, request for quotations or any other document inviting tenderers to submit a tender;
- (q) “lead procuring entity” means the procuring entity designated with responsibility for procuring a certain category of items on behalf of all other procuring entities;
- (r) “non-consulting services” means services other than consulting services, for the carrying out of work or any kind, with or without the use of vehicles, machinery or equipment or the provision of operators, technicians or drivers;
- (s) “performance security” means a guarantee or a bond from a successful tenderer’s bank or an insurance company, which should be provided by the successful tenderer to the procuring entity with the aim of compensation for any loss resulting from the tenderer’s failure to complete its obligations under the contract;
- (t) “procurement” means the acquisition by purchase, rental, lease, hire purchase, license, franchise or any other contractual means, of any type of goods, works, services or assets or any combination of goods, works, services or assets;
- (u) “procuring entity” means any entity designated to conduct public procurement activities, in accordance with section 31 of the Act, whether on behalf of itself or another requesting entity, and may include the Technical Secretariat and any Ministry, Department, Agency, category A public enterprise or Local Government Authority;
- (v) “requesting entity” means any Ministry, Department, Agency, category A public enterprise, Local Government Authority or other body initiating a procurement requirement;
- (w) “services” means any object of procurement other than goods or works, which involve the furnishing of labour, time or effort;

- (x) “supplier” means a natural person or incorporated body that is party to a contract with a procuring entity for the provision of goods, works or services and includes a contractor, consultant or service provider;
  - (y) “tender” means an offer to provide goods, works or services submitted by a tenderer in response to an invitation from a procuring entity and includes tenders, proposals, quotations and, where applicable, applications to pre-qualify;
  - (z) “tenderer” means an entity that offers to provide goods, works or services in response to an invitation from a procuring entity and includes, where applicable potential tenderers and applicants to pre-qualify;
  - (aa) “tender security” means a guarantee or bond from a tenderer’s bank or an insurance company which should be provided by the tenderer as part of its bid with the aim of protecting the procuring entity against the risk of tenderer’s conduct during the tender period which would warrant the security’s forfeiture or otherwise returned to the tenderer after tender process.
  - (bb) “tender securing declaration” means a security by way of declaration provided by the tenderer when the procurement is within the exclusive preference limits; provided under a preference scheme that is promulgated in accordance with the laws of Swaziland.
  - (cc) “works” means all work associated with the construction, reconstruction, demolition, repair or renovation of a building, road, structure or activities, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to the contract, if the value of those services does not exceed that of the works themselves.
- (2) Other terms defined in the Act shall have the same meaning in these procedures as in the Act.

#### **4. Purpose and Objectives of Procedures**

- (1) The purpose of these procedures shall be to regulate the procurement of goods, works and services by procuring entities.
- (2) The objectives of these procedures shall be to establish a system and practices that serve to:
  - (a) ensure transparency and accountability in public procurement while maintaining appropriate confidentiality of information;
  - (b) achieve economy, efficiency and maximum competition to ensure value for money in the use of public funds;
  - (c) promote more diverse private sector participation, through fair and non-discriminatory treatment of tenderers;
  - (d) develop economic capacity in Swaziland, through the provision of opportunities for Swazi suppliers to participate in public procurement; and
  - (e) Promote regional and international trade in accordance with agreements entered into by the Government of Swaziland.

**5. Externally Funded Procurement**

- (1) To the extent that these procedures conflict with procurement rules of a donor or funding agency, the application of which is mandatory pursuant to an obligation entered into by the Government, the requirements of those rules shall prevail, but in all other respects, the procurement shall be governed by these procedures.
- (2) In dealing with donor funded procurement, the procuring entity shall observe the provisions of section 5 of the Act.
- (3) A procuring entity shall not seek clearance of tender documents or award recommendations from a foreign government, agency or institution that extended the loan, credit or grant before obtaining internal clearance of the same from an appropriate approving authority.
- (4) To the extent that the clearance or approval of the appropriate internal approving authority conflict with the external clearance or approval of an external approving authority arising out of the loan or credit or grant agreement, the clearance or approval of the external approving authority shall prevail, but in all other respects, the internal clearance or approval shall prevail.

**6. Procurement Manual, Documents, Circulars and Instructions**

- (1) In accordance with the provisions of section 66 of the Act, the Agency shall, from time to time, issue:
  - (a) public procurement manuals, circulars and instructions to provide further guidance on the interpretation and application of these procedures; and
  - (b) standard procurement documents, whose use shall be mandatory in all procurement proceedings by procuring entities.

**7. Deviations**

- (1) A deviation from the use of a public procurement method, rule, process or document specified in the Act and these procedures or any documents or instruments issued in accordance with Paragraph 6 may be permitted by the Agency -
  - (a) where exceptional requirements make it impossible, impractical or uneconomical to comply with the Act and these procedures; or,
  - (b) where market conditions or behaviour do not allow effective application of the methods, rules, processes or documents; or,
  - (c) for specialised or particular requirements that are regulated or governed by harmonised international standards or practices; or,
  - (d) where national security may be compromised.
- (2) Where, as envisaged in sub-paragraph (1), the need to deviate from the use of a public procurement method, rule, process or document arises, the concerned controlling officer shall submit an application for a deviation to the Agency in writing, stating -
  - (e) the method, rule, process or document from which a deviation is required;
  - (f) the reasons for the deviation;
  - (g) an explanation of the proposed alternative method, rule, process or document to be used; and
  - (h) any other relevant information, including such additional information as the Agency may request.

- (3) The Agency shall record in its minutes -
  - (i) all applications requesting deviations; and
  - (j) all decisions of the Agency in respect of those applications received.

## **PART 2**

### **INSTITUTIONAL ARRANGEMENTS**

#### **8. Responsibility for procurement activities**

- (1) The responsibility for undertaking all procurement activities and perform the functions of a procuring entity for procurements within its level of authority shall lie with the requesting entity, except for the following cases:
  - (a) Procurement for certain specialised categories of goods, works or services shall be conducted solely by a designated lead procuring entity with technical or sector specific expertise; and
- (2) Procurement of common use items shall be conducted centrally on behalf of all procuring entities by one or more designated lead procuring entities.
- (3) The level of authority for a requesting entity performing the functions of a procuring entity and a lead procuring entity designated to carry out procurement activities referred in paragraph (1) above shall be in accordance with the provisions of paragraph 18.
- (4) All procurements where the estimated value exceed the level of authority of a requesting entity performing the functions of a procuring entity or a lead procuring entity shall be conducted by the Technical Secretariat.
- (5) For procurements conducted by the Technical Secretariat or a lead procuring entity on behalf of any other entity, the other entity shall perform the functions of the requesting entity.

#### **9. Requesting entity**

- (1) In a procurement process, the requesting entity shall be responsible for:
  - (a) initiating procurement requirements and obtaining all necessary authorisations for the commitment of funds;
  - (b) preparing statements of requirements for the goods, works or services required;
  - (c) participating in the evaluation of tenders and preparation of evaluation reports as members of the evaluation committee;
  - (d) liaising with and providing all required information to the designated procuring entity or entities throughout the procurement process; and
  - (e) providing procurement reports as may be required.

#### **10. Procuring entity**

- (1) A procuring entity is an entity authorised to carry out procurement as defined in the Act.

**11. Entity Procurement Units**

- (1) A procuring entity may establish an Entity Procurement Unit in accordance with provisions of section 35 of the Act to carry out the responsibilities of all procurement activities and for performing the functions of the procuring entity in accordance with provisions of section 34 of the Act.
- (2) Where more than one requesting entity come within the purview of a procuring entity and an entity procurement unit is established by the procuring entity, the responsibilities to carry out all procurement activities and perform the functions of the procuring entity shall lie with the entity procurement unit. In such situations, the requesting entities shall not carry out their procurements themselves and shall refer their procurements to the entity procurement unit, unless the estimated value does not exceed the level of authority of the controlling officer established in accordance with section 27(3) of the Act.
- (3) Where an entity procurement unit is established but the procurement is referred to any other designated lead procuring entity or the Technical Secretariat in accordance with paragraph 8, the entity procurement unit shall perform the functions of requesting entity on behalf of and in consultation with the requesting entities coming within its purview.

**12. Entity Tender Board**

- (1) In accordance with the provisions of section 27 of the Act, the Agency may authorise establishment of an Entity Tender Board for a procuring entity, where the procuring entity establishes an entity procurement unit.
- (2) An Entity Tender Board shall act as approvals authority for all procurements conducted by the procuring entity, whether for itself or on behalf of another requesting entity, which falls within the level of authority of that Entity Tender Board.
- (3) The level of authority for an Entity Tender Board shall be in accordance with the levels of authority established in accordance with section 27(3) of the Act.

**13. Lead procuring entity**

- (1) A lead procuring shall be as defined under Section 2 of the Act.
- (2) Procurement for common use items and certain specialised items or categories of procurements shall be managed by a lead procuring entity, which shall be the -
  - (a) ministry responsible for health for medical and pharmaceutical products and related services;
  - (b) ministry responsible for agriculture for drugs and related services for use by the Veterinary Department;
  - (c) ministry responsible for transport for vehicles and mechanical plant, including heavy earth moving equipment, spare parts for vehicles and mechanical plant and services related to the foregoing;
  - (d) ministry responsible for public works for all building, engineering and other works and for all consultancy services related to works procurement; and
  - (e) Government Central Stores for all common use items which are held in stock in the Central Stores.
- (3) The Technical Secretariat may designate other lead procuring entities, with responsibility for managing the procurement of, common use items and certain

specialised items or categories of procurements, in accordance with guidelines issued by the Agency.

- (4) For a procuring entity to be designated as a lead procuring entity, it must establish an entity procurement unit and obtain authorisation of the Agency to establish an Entity Tender Board.
- (5) The provisions of sub-paragraph (2) shall be applicable only after the procuring entities referred therein establish an entity procurement unit and obtain authorisation of the Agency to establish an Entity Tender Board.
- (6) Notwithstanding the provisions of sub-paragraph (2), the requesting entity may procure the goods, works or services without reference to a lead procuring entity where -
  - (a) the estimated value does not exceed the level of authority of the controlling officer established in accordance with section 27(3) of the Act; and
  - (b) the items are not common use items subject to central procurement arrangements in accordance with paragraph 19.

#### **14. Technical Secretariat**

- (1) The Technical Secretariat, established in the Ministry of Finance in accordance with provisions of section 32 of the Act, shall provide procurement and secretarial services for the Government Tender Board.
- (2) All procurements where the estimated value exceeds the level of authority of all lower authorities shall be conducted by the Technical Secretariat as a lead procuring entity.
- (3) The Head of the Technical Secretariat or his/her representative shall be the Secretary to the Government Tender Board.

#### **15. Swaziland Government Tender Board**

- (1) In accordance with the provisions of section 25 of the Act, the Swaziland Government Tender Board shall be established for the purpose of ensuring that procurement is conducted in accordance with these procedures and for approving awards of contract whose value exceeds the level of authority of lower approval authorities, as specified in paragraph 18.
- (2) For the avoidance of doubt;
  - (a) the Central Tender Board and the Treasury Tender Board shall be abolished; and
  - (b) any functions required to be performed by the Central or Treasury Tender Board under the Stores Regulations, 1975, shall be performed by the Government Tender Board, except where otherwise specified in these procedures.
- (3) The Government Tender Board shall be the highest approvals authority for the Government of Swaziland, with responsibility for providing prior authorisation of specified stages of the procurement process in accordance with paragraph 18.

#### **16. Subcommittees of the Government Tender Board**

- (1) The Government Tender Board may establish sub-committees in accordance with provisions of section 26 of the Act to conduct particular functions of the Government Tender Board under delegated authority from the Government Tender Board.



- (2) In establishing subcommittees, the Government Tender Board may appoint members from outside the Government Tender Board, provided that the composition of the subcommittee includes at least one member of the Government Tender Board who shall be the Chairperson of the subcommittee.
- (3) The Head of the Technical Secretariat or his/her representative shall be the Secretary to all subcommittees of the Government Tender Board.

**17. Meetings of the Tender Boards**

- (1) The Government Tender Board or its subcommittees or an Entity Tender Board, hereinafter commonly referred as Tender Board in these procedures, shall meet as often as is necessary for the proper and timely discharge of its functions.
- (2) Subject to the provisions of section 29 of the Act, the Tender Board shall prescribe and regulate procedures for its meetings in accordance with the procurement manual issued by the Agency from time to time.
- (3) Subject to the approval of the appointing authority who appointed the member, a member of the Tender Board may nominate a proxy to attend a meeting of the Tender Board on their behalf. Such nomination shall be in accordance with qualifications as prescribed by Section 28(2) of the Act and such nominee shall declare under oath that she or he is free from any conflict of interest in relation to all the matters to be dealt with by the Tender Board.

**18. Procurement Authorisations and Levels of Authority**

- (1) The following stages of the procurement process shall require the prior authorisation of the relevant approvals authority:
  - (a) invitation documents, advertisements and shortlists prior to their issue;
  - (b) evaluation reports prior to any further tender opening or notification of award; and
  - (c) contract amendments or terminations prior to their issue.
- (2) The use of Limited Tendering and Single Source Procurement, except where these methods are used in accordance with the thresholds in Schedule 2, shall require the prior authorisation of the Government Tender Board.
- (3) The relevant approvals authority shall be determined by the estimated or, where known, actual value of the procurement in accordance with the levels of authority established in accordance with section 27(3) of the Act. Where authorisation is required for a contract amendment in accordance with sub-paragraph (1)(c), the approvals authority shall be determined by the total contract value after amendment and not by the value of the amendment.
- (4) The relevant approvals authority shall be -
  - (a) the controlling officer where the value of the procurement does not exceed the level of authority established in accordance with section 27(3) of the Act and the procurement is conducted either by a requesting entity itself or by an entity procurement unit where no Entity Tender Board is established;
  - (b) the Entity Tender Board where the value of the procurement does not exceed the level of authority established in accordance with section 27(3) of the Act and the procurement is conducted by the entity procurement unit of the procuring entity;

- (c) the Entity Tender Board of a lead procuring entity where the value of the procurement does not exceed the level of authority authorised by the Agency for the lead procuring entity and the procurement is conducted by the entity procurement unit of the lead procuring entity;
  - (d) any subcommittee of the Government Tender Board where the value of the procurement does not exceed the level of authority delegated to the subcommittee by the Government Tender Board and the procurement is conducted by the Technical Secretariat;
  - (e) the Government Tender Board where the value of the procurement exceeds the levels of authority of all lower approvals authorities and the procurement is conducted by the Technical Secretariat.
- (5) The Head of the Technical Secretariat shall notify all procuring entities of the level of authority of any subcommittee with delegated authority from the Government Tender Board.
- (6) Contract documents shall be authorised by the controlling officer prior to their issue, provided that they are in line with the authorisations of the relevant approvals authority. A copy of the contract issued shall be provided to the relevant approvals authority.

### **PART 3**

## **PROCUREMENT OF COMMON USE ITEMS AND SOURCES OF SUPPLY**

### **19. Procurement of Common Use Items**

- (1) Subject to the provisions of section 37 of the Act, common use items shall be procured centrally on behalf of all requesting entities, or a group of requesting entities, by one or more lead procuring entities designated in accordance with paragraph 13.
- (2) A procuring entity shall procure from the Government Central Stores any item included in the approved stores catalogue issued from time to time where such item is available at lower prices than prevailing market prices.
- (3) The Government Central Stores shall, on quarterly year basis, publish by way of Circulars and in the Agency's website, the descriptions of items available on the stores catalogue.
- (4) Where the procuring entity submits to the Government Central Stores, a request for purchase of items in the stores catalogue and such items are not available, the Government Central Stores shall, within one working day of receipt of the request, issue a non-availability certificate to the procuring entity.
- (5) On receipt of the certificate referred to in sub-paragraph (4), a procuring entity may opt for another appropriate procurement method.
- (6) A procuring entity shall procure from the Government Central Stores a clearing and forwarding service where such service is available at lower prices than prevailing market prices.
- (7) The Government Central Stores shall arrange for procurement of common use items and services by procuring entities through framework contracts.
- (8) A framework contract under this paragraph shall not be less than one year and not more than three years.

- (9) The Government Central Stores shall publish in the Agency's website the list of suppliers awarded framework contracts.
- (10) A procuring entity shall-
- (a) by the end of January each year, submit to the Government Central Stores, their provisional annual estimates of the required common use items and services which shall include descriptions, specifications, statement of requirements and quantities;
  - (b) procure common use items and services from tenderers awarded framework contracts by the Government Central Stores through placing of call off orders prepared by the entity procurement unit and approved by the controlling officer or any delegated officer;
  - (c) submit to the Government Central Stores and the Agency, monthly reports on procurement made through framework contracts indicating the names of suppliers, description of goods or services, quantity and the value.
- (11) In the case of common use items and services falling under open framework contracts, the procuring entity shall seek approval of the tender board to conduct a mini competition amongst the suppliers awarded framework contracts.
- (12) Where the procuring entity contracts out the procurement and disposal by tender functions to the Government Central Stores, procurement procedures to be followed shall be in accordance with these procedures.
- (13) The Government Central Stores may on annual basis provide an opportunity to new tenderers to participate in tendering process for common use items and services and the names of successful tenderers shall be included in the current list of suppliers.
- (14) A tenderer who has entered into framework contract with the Government Central Stores shall comply with terms and conditions of the agreement, and shall-
- (a) honour call off orders prepared and submitted by procuring entities in respect of framework contracts signed;
  - (b) supply and deliver all goods and services to the procuring entity at the rates, prices and at places stated in the framework contract and call off order;
  - (c) where samples are required, provide the samples for approval, and all goods supplied shall be in accordance with the approved samples;
  - (d) indemnify the procuring entity in the case of damage or loss of benefit caused by delay in delivery or any other act;
  - (e) prepare and submit to the Government Central Stores a monthly sales report indicating the value of goods and services sold to procuring entity through call off orders;
  - (f) pay fees to the Government Central Stores as prescribed in the Schedule 4 to these procedures.
- (15) The procuring entity shall prepare and place call off orders to tenderers who are awarded framework contracts, and, in particular, shall be responsible for-
- (a) effecting payments for goods and services delivered and accepted;
  - (b) claiming for damages caused by delayed delivery or any other act; and
  - (c) reporting to the Government Central Stores and the Agency any breach of contract or unsatisfactory performance by a tenderer under framework contracts.

- (16) The Government Central Stores shall prepare and sign framework contracts with tenderers, and, in particular, shall be responsible for receiving and reviewing reports on default of framework contracts from procuring entities and where a breach of contract is determined, submit a proposal for suspension of a tenderer to the Agency.
- (17) Where reported cases of non-performance by a tenderer persist, the Government Central Stores may terminate framework contract and report the matter to the Agency.
- (18) The Government Central Stores may, at any time during the contract execution, accept a request to make price adjustment and shall make a comparison of the prices requested against the international price indicator guides and verify the justification for such price adjustment.
- (19) The Government Central Stores shall determine the factor or percentage for price adjustment which shall be approved by the Agency.
- (20) The Government Central Stores shall, in each financial year, prepare and make available to procuring entities, a schedule of prices to be adhered to by such procuring entities in procurement of common used items and services.
- (21) The Minister responsible for works shall, in each financial year, prepare and make available to the Government Central Stores a schedule of unit rates to be adhered to by procuring entities in procurement relating to construction works.
- (22) The procuring entities and tenderers shall pay fees to the Government Central Stores for procurement services rendered by the Government Central Stores as prescribed in the Schedule 4 to these procedures.
- (23) The Government Central Stores shall procure stock items for resale for inclusion in the stores catalogue from manufacturers, wholesalers or any other source which offers best value for money.
- (24) The Government Central Stores may procure petroleum products directly from any source where such products meet the required standards and are available at competitive prices.
- (25) Subject to sub-paragraph (24), the authorised procurement limit for the Government Central Stores shall be as established in accordance with section 27(3) of the Act.

## **20. Supplier Eligibility**

- (1) In order to be eligible to participate in public procurement, all tenderers shall be required by the procuring entities to meet the eligibility criteria, stipulated in section 40 of the Act.
- (2) All invitation documents shall state the eligibility requirements and specify any documentary evidence required as proof of eligibility.

## **21. Supplier Qualifications**

- (1) In accordance with the provisions of section 41 of the Act, a procuring entity may require tenderers to meet such qualification criteria as the procuring entity considers appropriate to the particular procurement requirement, to demonstrate that it has the capability and resources to effectively perform the contract.
- (2) Invitation documents shall state any qualification requirements and specify the documentary evidence or information required to demonstrate the tenderer's qualifications.

- (3) Procuring entities may verify the qualifications of tenderers through either pre-qualification in accordance with paragraph 63 or post-qualification in accordance with paragraph 82.
- (4) Tenderers' qualifications for consulting services shall be verified as part of the short-listing process in accordance with paragraph 87.

## **PART 4**

### **MEASURES TO PROMOTE SWAZI COMPANIES**

#### **22. Measures to Promote Swazi Companies**

- (1) The Government shall, with a view to promoting economic capacity and the competitiveness of businesses in Swaziland, initiate measures to facilitate participation by Swazi companies and citizen service providers in public procurement.
- (2) The measures referred to in sub-paragraph (1) may include, but shall not be limited to-
  - (a) encouraging foreign companies to subcontract with Swazi companies;
  - (b) publishing indicative notices of planned procurement, particularly for high value contracts which may include subcontracting opportunities;
  - (c) where feasible and appropriate, dividing procurement requirements into lots, of a size for which small Swazi companies are qualified and able to tender;
  - (d) favouring approaches to technical requirements and standards which are familiar to companies in Swaziland;
  - (e) granting preferences to Swazi companies in the evaluation of tenders;
  - (f) ensuring the prompt payment of invoices; and
  - (g) providing training in tendering requirements for Swazi companies.

#### **23. Preference for Swazi Companies in Goods, Works and Non Consultancy Services**

- (1) Swazi companies and citizen service providers may be given a preference in the evaluation of tenders for goods, works and non-consultancy services by adding a specified margin to the evaluated price of other tenderers who are not eligible for the preference during the financial evaluation of tenders.
- (2) For purposes of this Paragraph, a Swazi company is one -
  - (a) which is registered in Swaziland; and
  - (b) of which at least 60% of the controlling shares are owned by Swaziland citizens.
- (3) The margin referred to in sub-paragraph (1) shall be specified in the invitation document and may be up to a maximum of 15%, subject to the provisions of the Act or any applicable law enacted by Parliament.
- (4) To be eligible for any preference, companies shall -
  - (a) be a Swazi company in accordance with sub-paragraph (2);
  - (b) where appropriate for the procurement of goods, be manufacturers of the goods or authorised agents of the manufacturers, as demonstrated by a manufacturer's authorisation; and

- (c) for the procurement of works and non-consultancy services, use citizen service providers for the majority of the works or services performed.
- (5) Preference may also be given to foreign companies which sub-contract Swazi companies or supply Swazi manufactured goods.
- (6) The preference referred to in sub-paragraph (5) shall be in the form of a margin specified in the invitation document and may be up to a maximum of 7.5%.
- (7) Further rules may be included in the invitation document concerning eligibility for the margin of preference, the documentation required as evidence of eligibility and the manner in which the margin of preference will be applied during evaluation.
- (8) The level of preference accorded to a tenderer may be variable, but must be proportional to the percentage of the contract to be actually executed with Swazi manufactured goods or by Swazi agents or nationals.

**24. Participation by Swazi Companies and Citizen Service Providers in Consultancy Services**

- (1) In the evaluation of proposals for consultancy services, evaluation points may be allocated for participation by Swazi companies or citizen service providers during the technical evaluation of proposals.
- (2) Participation may be by associating or sub-contracting with a Swazi company or by using Swazi citizen service providers as key personnel.
- (3) The points shall be specified in the request for proposals document and may be up to 15% for participation by Swazi companies and 20% for citizen service providers.

## **PART 5**

### **GENERAL PROCUREMENT RULES**

**25. Record Keeping**

- (1) Procuring entities and requesting entities shall maintain records of all procurement proceedings.
- (2) Such records shall be maintained for a period of 5 years from the date of (a) contract completion or termination; or (b) a decision to terminate the procurement proceedings; or (c) the settlement of any dispute under the contract; whichever is later.
- (3) All procurement records shall contain at least the following documents, where appropriate -
  - (a) the request to initiate procurement proceedings;
  - (b) a copy of any published notices;
  - (c) any shortlist or list of pre-qualified tenderers;
  - (d) a copy of the pre-qualification and invitation documents and any amendments or clarifications;
  - (e) the records of tenders received and tender openings;
  - (f) copies of all tenders evaluated and any clarifications requested and responses received;
  - (g) the evaluation report(s);

- (h) minutes of any meetings related to the procurement, including pre-bid meetings;
- (i) the notification of contract award;
- (j) the signed contract document;
- (k) any contract amendments or variations;
- (l) all submissions to and all decisions of the approvals authority related to the procurement or contract amendments;
- (m) all post contract documentation relating to the fulfilment of contract obligations, in particular copies of bank guarantees or advance payment guarantees;
- (n) all documentation evidencing deliveries of goods or completion certificates in relation to contracts for works or services;
- (o) copies of all invoices for goods, works and services and details of payment authorisations;
- (p) copies of any claims or disputes under the contract; and
- (q) all correspondence between the procuring entity and tenderers and the supplier.

**26. Communications**

- (1) Subject to the provisions of these procedures, communication between tenderers and a procuring entity shall be in written or electronic form that provides a record of the content of the communication.
- (2) Communications between a tenderer and a procuring entity may be made by means of communication that does not provide a record of the content of the communication, provided that, immediately thereafter, confirmation of the communication is given to the recipient of the communication in a form which provides a record of the confirmation.
- (3) For the purposes of this paragraph, in writing shall mean in a form that provides a record of the content of the communication and may include fax or electronic mail, except where otherwise indicated in these procedures or in invitation documents.
- (4) Meetings between a procuring entity and tenderers or suppliers shall be minuted and any agreements shall be confirmed in writing.
- (5) The procuring entity shall not discriminate against or among tenderers on the basis of the form in which they transmit or receive documents, notifications, decisions or other communications.
- (6) All communications to a tender board shall be addressed to the secretary of tender board through the postal, physical or electronic means.
- (7) The language of communication shall be English.

**27. Conduct of Officers involved in procurement**

- (1) All officers who have responsibilities for procurement shall -
  - (a) abide by any code of conduct promulgated by the Agency in terms of Section 59 of the Act or other instruments applicable to their conduct and activities related to public procurement;
  - (b) always act in the public interest and in accordance with the objectives and provisions set out in these procedures;

- (c) exercise powers and discharge duties for a proper purpose, consistent with their responsibilities, and with the degree of care and diligence that a reasonable person would exercise in similar circumstances;
  - (d) discharge duties impartially so as to assure fair competitive access to public procurement by tenderers;
  - (e) not use their position, or information obtained because of their position, improperly to gain an advantage for themselves or someone else or cause a detriment to a procuring entity;
  - (f) not interfere with or exert undue influence on any person to affect a procurement activity or decision;
  - (g) at all times avoid conflicts of interest and the appearance of conflicts of interest;
  - (h) not commit or abet corrupt, fraudulent, collusive or coercive practices; and
  - (i) keep confidential the information that comes into their possession relating to procurement, including tenderers' proprietary information.
- (2) Officers, and their close relatives, shall not participate as tenderers or suppliers in the public procurement of the procuring entity by which they are employed or over which they exercise any approvals or oversight authority.
- (3) For purposes of this paragraph -
- (a) "undue influence" includes any form of pressure brought to bear by any official, elected or appointed, who is in a position to either provide a benefit to, or exact punishment against, any person involved in procurement activities or decisions;
  - (b) "conflict of interest" means circumstances in which the personal interest of an officer, or of a close relative or close associate of an officer, might benefit, directly or indirectly, from their official actions.

## **28. Conduct of Tenderers and Suppliers**

- (1) Tenderers or suppliers participating in public procurement shall -
- (a) at all times abide by their obligations under these procedures, contracts, Schedule 5, and other instruments applicable to their conduct and activities related to public procurement; and
  - (b) not commit or abet corrupt, fraudulent, collusive or coercive practices.

## **29. Suspension of Tenders and Suppliers**

- (1) Suspension proceedings may be initiated by the Agency as a result of audit or investigation conducted by the Agency or where a suspension proposal is submitted to it, by any person.
- (2) Any suspension by a procuring entity shall be pursuant to section 55 of the Act.
- (3) Subject to the provisions of the Act, a tenderer shall be suspended from participating in public procurement or disposal proceedings if-
- (a) corrupt, fraudulent, collusive, coercive or obstructive practices or inducement is established against the tenderer, in which case the tenderer shall be suspended for a maximum period of five years;
  - (b) it is established that the tenderer fails to implement a procurement or disposal contract, in which case the tenderer shall be barred for a period of not less than one year and not exceeding five years;



- (c) the tenderer makes false representation about his qualification during tender proceedings, in which case the tenderer shall be barred for a period of not less than one year and not exceeding five years;
  - (d) the tenderer is declared ineligible by a procuring entity to participate in public procurement or disposal in accordance with section 40 of the Act.
- (4) Where a tenderer is suspended from participating in public procurement or disposal on grounds other than those specified in sub-paragraph (3), subject to the provisions of section 55 of the Act, the period of suspension may be determined by the Agency depending on the gravity of the offence.
  - (5) A person who wishes to submit a proposal for suspension of a tenderer to the Agency shall do so within twenty eight days of becoming aware of the circumstances or grounds which give rise to the suspension.
  - (6) Where a procurement proceeding is in progress, a proposal for suspension may include a recommendation that the potential tenderer be precluded from participating in procurement pending the determination of suspension proposal.
  - (7) A recommendation for suspension as a result of audit or investigation by the Agency or a suspension proposal submitted pursuant to sub-paragraph (5) shall specify-
    - (a) the name and address of the potential tenderer recommended for suspension;
    - (b) the grounds for the proposed action;
    - (c) factual record which include all evidences, information and documents; and
    - (d) any other information or documents in the possession of, or known to, the person submitting the suspension proposal.
  - (8) The Agency may require any public body or person to produce information, documents or any evidence concerning possible grounds for suspension of a potential tenderer.
  - (9) A public body or a person required under sub-paragraph (8) to produce information, documents or evidence, shall produce the documents or evidence within fourteen days from the date of receiving the request.
  - (10) Where the Agency determines that there are grounds for suspension on the basis of the produced information, documents and evidences, the Agency shall, within twenty one days from the date of receiving the evidence, issue to the respective tenderer a notice of suspension.
  - (11) The notice of suspension shall inform the tenderer of the facts constituting grounds for the proposed suspension.
  - (12) The notice shall require the tenderer to make written representation showing cause why he should not be suspended from participating in public procurement for a period specified pursuant to the Act and these procedures.
  - (13) The tenderer shall respond to the notice referred to in sub-paragraph (11) of this paragraph within fourteen days from the date of receiving the notice.
  - (14) Any representation made under sub-paragraph (12) shall contain a certificate signed by the tenderer under oath that the information contained in the representation is true to the best of the knowledge of such tenderer.
  - (15) Upon receipt of the representation under sub-paragraph (12), the Agency may, depending on the circumstances of the case, determine whether or not the tenderer

should be precluded from participating in procurement proceedings pending the completion of suspension proceedings.

- (16) Where the Agency determines that the tenderer should be precluded in accordance with sub-paragraph (15), the Agency shall preclude the tenderer for a period that the Agency may determine or, until the final determination of suspension proceedings.
- (17) The Agency may terminate the preclusion where it considers that the grounds for the preclusion are no longer valid.
- (18) Any preclusion under this paragraph shall remain in effect until a decision on the proposed suspension is taken or where a preclusion is terminated pursuant to sub-paragraph (17).
- (19) The Agency shall send a copy of its decision under sub-paragraphs (15) and (16) to the tenderer and where applicable, to the person who proposed the suspension.
- (20) The Agency shall decide on the proposed suspension within thirty days-
  - (a) from the date of receiving the representation from the tenderer;
  - (b) from the date of the decision for preclusion where the preclusion is determined pursuant to sub-paragraph (15); or
  - (c) after the expiry of the period specified in sub-paragraph (13).
- (21) The period of suspension of the tenderer shall be decided in accordance with sub-paragraph (3) and (4).
- (22) The decision of the Agency shall be in writing and shall include a summary of the findings of fact and reasons for the decision.
- (23) The Agency shall send a copy of its decision under sub-paragraph (22) to the tenderer and to any other person who has legitimate interest on the procurement in question.
- (24) The Agency shall notify procuring entities on the decision made pursuant to sub-paragraph (22), and shall publish such decision on the Agency website.

### **30. Register of precluded and suspended tenderers**

- (1) The Agency shall maintain a register of all precluded and suspended tenderers which shall, among other things, specify the name and address of each tenderer under preclusion or suspension, grounds for preclusion or suspension and the period under which the tenderer is on preclusion or suspension, as the case may be.
- (2) The register shall, at all times during office hours, be made available to the public and shall also be available on the Agency's website.
- (3) A tenderer who is blacklisted under these procedures shall not be permitted to start a new supplies, contracting or consulting firm during that period for the purpose of participating in public procurement or disposal.
- (4) Procuring entities shall not procure from, contract with, or engage a tenderer who is blacklisted from participating in public procurement proceedings pursuant to the Act and these procedures.
- (5) Where a tenderer is suspended under the provisions of these procedures, any person who, at the time of suspension, was concerned with the management of the affairs of the suspended company or firm as director, partner, agent or an officer, shall be suspended from participating in public procurement or disposal by tender for the same period.

- (6) The Agency shall inform the relevant statutory bodies upon suspension and blacklisting of a tenderer.
- (7) Any preclusion or suspension of a potential tenderer under these procedures shall not affect any existing contracts entered into between the tenderer and any public body before the suspension decision except where fraud and corruption is established.
- (8) A tenderer who is dissatisfied with the suspension decision made by the Agency under these procedures, may appeal against the decision in accordance with Section 57 of the Act.
- (9) The Independent Review Committee shall conduct a hearing of appeal or review in accordance with the rules and procedures made under the Act.
- (10) A tenderer who claims to have suffered or who may suffer any loss or injury as a result of breach of a duty imposed on a procuring entity or an approvals authority by the Act or these procedures may apply for a review in accordance with section 48 of the Act.

### **31. Use of Standard Documents**

- (1) Procuring entities shall use the standard documents issued in accordance with paragraph 6 as templates for drafting all invitation and contract documents and notices.
- (2) Where no suitable standard document has been issued, procuring entities shall consult the Agency on the document to be used.

### **32. Procurement Reference Numbers**

- (1) All procurement requirements shall be given a unique procurement reference number, in accordance with the numbering system determined by the Agency.

### **33. Publication of Notices**

- (1) Notices inviting potential tenderers to participate in procurement proceedings and contract award notices shall be published -
  - (a) in at least two English language publications in Swaziland, which must be of wide enough circulation to reach sufficient potential tenderers to ensure effective competition; and
  - (b) The Agency's website.
- (2) Where an abridged version of the notice is published in accordance with subparagraph (1)(a) above, such abridged notice shall make reference to the Agency's website where the full version must be published in accordance with subparagraph (1)(b).
- (3) Should there be any discrepancy or conflict between the notices published on the Agency's website and those notices published in other media, the notices published on the Agency's website shall take precedence.
- (4) Where international tendering is used, the notice shall also be published in media of wide regional or international circulation or on widely read internet sites.
- (5) In addition, where the procuring entity believes it is necessary to ensure wide competition, it may, after the date of publication of the notice, send invitation notices directly to -

- (a) potential tenderers, who may be registered tenderers, past suppliers or any other identified potential sources;
  - (b) professional or industry associations; and/or
  - (c) Swazi embassies in countries which are likely to participate and/or foreign embassies of those countries in Swaziland where international tendering is used.
- (6) The procuring entity shall keep a record of any tenderers or organisations to whom the invitation notice is sent directly, which shall form part of the procurement record.

**34. Publication of Results of Tender Award**

- (1) The results of tender award shall be published on the Agency's website on regular basis, as well as in the print media on a regular basis at intervals to be determined by the Agency.

**35. Reasons for not Accepting Lowest Tender**

- (1) Where the lowest tender is not accepted, reasons may be given orally, on request, to any tenderer who submitted a lower tender than that accepted.
- (2) The reasons under sub-paragraph (1) shall be given by the approvals authority and, in no case, shall the authority to give reasons be delegated to any person below the level of the secretary of the Government Tender Board or an Entity Tender Board.
- (3) The minutes of the meetings of the approvals authority shall specify the reasons for rejecting or accepting a lower tender, and such information shall be confidential.

**36. Request for Information**

- (1) Where any tenderer for a contract on which a decision or recommendation has been made prefers to make a formal approach and accordingly requests information, he is to be given a written statement which shall list the material issues of fact and the broad reasons for the decision as recorded in the tender board's minutes.
- (2) A tenderer with a lower price but passed over is to be given more detailed written reasons as to why his tender was not accepted, if he so specifically requests, such reasons must conform with those recorded in the tender board's minutes.
- (3) Requests for information from other tenderers shall be considered on merits and, except where a tenderer specifically advises otherwise, all details of tenders submitted shall be treated as confidential between the tenderer and the procuring entity.

**37. Submission of Procurement Report**

- (1) The controlling officer shall, within thirty days from the date of award prepare and submit to the Agency, in accordance with guidelines for reporting procurement information issued by the Agency, a summary indicating the following:
- a) the names of the person or body to whom the contract is awarded;
  - b) the amount of tender and the date on which the award was made;
  - c) description of the contract, bidding process including tender invitation, issuing of tender documents, pre-tender clarifications, if any and bid opening and evaluation; and
  - d) complaints received during tender process, if any.

**38. Period of Effectiveness of Tender**

- (1) The validity period required for tenders shall be specified in the tender document.
- (2) Any tender which purports to be valid for a shorter period shall be rejected by a procuring entity as being substantially non-responsive.
- (3) The period fixed by a procuring entity shall be sufficient to permit evaluation and comparison of tenders, for obtaining all necessary clearances and approvals, and for the notification of the award of contracts and finalise a contract but the period shall not exceed one hundred and twenty days from the final date fixed for submission of tenders.
- (4) In exceptional circumstances, prior to the expiry of the original period of effectiveness of tenders, a procuring entity may request tenderers to extend the period for an additional specified period of time.
- (5) A tenderer may refuse the request under sub-paragraph (4) without forfeiting its tender security and the effectiveness of its tender shall be terminated upon the expiry of the un-extended period of effectiveness.
- (6) The request and the responses shall be made in writing or by any other means that provide a record of the information contained therein.
- (7) Tenderers who agree to an extension of the period of effectiveness of their tenders shall extend or seek an extension of the period of effectiveness of their tender securities provided by them, or provide new tender securities to cover the extended period of effectiveness of their tenders.
- (8) A tenderer whose tender security is not extended or, who has not provided a new tender security shall be considered to have refused the request to extend the period of effectiveness of its tender.
- (9) The provisions of paragraph 69 regarding discharge and forfeiture of tender security shall apply during the extended period of tender validity.
- (10) The successful tenderer shall remain bound by his tender for a further period of thirty days following the receipt of communication notifying him of his selection.

**39. Failed Tenders**

- (1) Where no responsive tenders are received or tender proceedings are otherwise unsuccessful, the procuring entity shall investigate the failed tender proceedings and prepare a report for the Government Tender Board. The report shall include the reasons why the procurement was unsuccessful and recommendations on how any new procurement proceedings should be managed to avoid such failings. The Government Tender Board shall, in turn, submit the report and its decision to the Agency.
- (2) The investigation shall consider all relevant issues, which may include, but are not limited to -
  - (a) whether the tendering period was sufficient;
  - (b) whether the requirements of the invitation document and the terms and conditions of the proposed contract were reasonable and not so excessive as to deter competition;
  - (c) whether the Statement of Requirements was clear, reasonable and designed to encourage fair and open competition;

- (d) whether any tender notice was published in an appropriate publication and on the required date;
  - (e) whether any shortlist included sufficient tenderers and whether the tenderers included provide the goods, works or services required;
  - (f) whether there was any delay in issuing the invitation documents;
  - (g) whether any amendments or clarifications to the invitation documents allowed sufficient time for tenderers to take them into account in preparing their tenders;
  - (h) whether there were other extraneous events or circumstances, which may have affected the ability of tenderers to respond;
  - (i) whether the evaluation process was conducted in accordance with these procedures and the invitation document and whether staff responsible for the evaluation had adequate skills and resources;
  - (j) whether there is any suspicion of collusion amongst potential tenderers; and
  - (k) whether the original choice of procurement method was appropriate.
- (3) The procuring entity shall make any appropriate recommendations, which may include, but are not limited to -
- (l) the use of an alternative method of procurement;
  - (m) amendments to the invitation document, including tendering requirements, the statement of requirements, the type of contract or the terms and conditions of the proposed contract;
  - (n) alternative publication of any invitation document or a revised shortlist; and
  - (o) the introduction of international competition.

#### **40. Rejection of All Tenders**

- (1) Subject to approval by the tender board, and if so specified in the invitation documents, the procuring entity may, prior to awarding the contract and notwithstanding the stage reached in the proceedings leading to the conclusion of the contract:
- a) either decide to reject all tenders at any time or annul the tender or selection proceedings in accordance with sub-paragraph (2) and order that the proceedings be recommenced, if necessary, using another method; or
  - b) where the project is divided into lots, award only certain lots and possibly decide that the others be the subject of another tender or other tenders, if necessary, using another method.
- (2) Rejection of a tender or selection proceeding may take place where:
- a) no tender or proposal is responsive to the tender documents or request for proposals;
  - b) no tender or proposal satisfies the criteria for the award of the contract as set out in the tender documents or request for proposal;
  - c) the economic or technical data of the project have been altered;
  - d) exceptional circumstances render normal performance of the contract impossible;
  - e) every tender or proposal received exceeds the budgetary resources available;

- f) the tenders or proposals received contain serious irregularities resulting in interference with the normal play of market forces;
  - g) funds voted or earmarked for the procurement have been withheld, suspended or have otherwise not been made available; or
  - h) there has been no competition.
- (3) The controlling officer shall apply for the approval of the Agency prior to rejecting all tenders.
- (4) The Agency shall consider the application for rejection of all tenders and shall respond to the procuring entity within five days of receipt of such application.
- (5) In the event of rejection of all tenders or annulment of selection proceeding, all tenderers who submitted tenders or proposals shall be notified by the procuring entity within seven days after approval from the Agency.
- (6) Neither the Agency nor the procuring entity shall incur liability solely by virtue of invoking sub-paragraphs (1) and (3) towards tenderers that submitted tenders.
- (7) When the rejection of all tenders or annulment of selection proceeding is caused by circumstances which do not necessitate the opening of tenders, the unopened and sealed envelopes containing the price proposals, where appropriate, and in any event, the other elements of the tender or proposal shall be returned to the tenderers.
- (8) Where all tenders are rejected pursuant to this paragraph:
- a) the procuring entity shall review the causes justifying the rejection and consider whether revision of the specifications or terms of reference or modification in the project or both are required before inviting new tenders or opt for another procurement method;
  - b) new tenders shall be requested from tenderers who were invited to submit tenders in the first instance plus new tenderers, and a reasonable amount of time shall be allowed for the submission of the new tenders; or
  - c) the procuring entity may, where it considers appropriate, require that the whole tender or selection proceeding be recommenced.

#### **41. Environmental Issues**

- (1) A procuring entity shall avoid wherever possible the procurement of chemicals, pesticides or other goods which are known to have or suspected to have harmful effects on the health of the population, the environment, domestic animals, wildlife and flora.
- (2) Where procurement of goods by a procuring entity is necessary, the requesting entity concerned shall ensure that the use of those goods is restricted so that any harmful effect are avoided or limited.
- (3) A procuring entity shall assess the impact on the environment of any works at the planning stage of the project and in any case before procurement proceedings are commenced.
- (4) A procuring entity shall pay due regard to repair and re-use of goods wherever practicable and economically viable before disposing them by tender and procuring new replacements.

#### **42. Monitoring by the Agency**

- (1) The head of the internal audit unit of each procuring entity shall prepare and submit to the controlling officer a quarterly audit report which shall include a report on whether the Act and these procedures have been complied with.
- (2) After receiving the report under sub-paragraph (1), the controlling officer shall, within fourteen days, submit to the Agency a copy of such report.
- (3) Upon receiving the report, the Agency may, if it considers necessary, require the controlling officer to submit a detailed report on any procurement implemented in violation of the Act and these procedures for review and necessary action.
- (4) Upon the request by the Agency, the controlling officer shall submit the requested report within fourteen days after receiving the request.
- (5) The report under this paragraph shall be in the format prescribed by the Agency.

**43. Continuous Monitoring**

- (1) For the Agency to continuously monitor procurement activities and contract implementation, procuring entities shall submit to the Agency annual procurement plans, information on tender notices, invitations for quotations, request for proposals, contract award, contract termination and monthly, quarterly and annual procurement implementation reports in the prescribed format and through systems developed by the Agency.
- (2) Procuring entities shall submit to the Agency-
  - a) annual procurement plans not later than fourteen days after their approval by appropriate budget approving authorities;
  - b) information on tender, quotation invitations and request for proposals within seven days after the invitation or request;
  - c) monthly and quarterly procurement implementation reports within seven days after the end of the respective month or quarter; and
  - d) annual procurement implementation reports within thirty days after the end of the respective financial year.
- (3) The controlling officer shall-
  - a) not later than seven days after the award of contract resulting from an emergency procurement, direct contracting or single source selection, submit a detailed report to the Agency of the procurement process in the format prescribed by the Agency;
  - b) within thirty days from the date of award, notify the Agency the name of the person or body to whom the contract is awarded, the amount of tender or proposal and the date on which the award was made;
  - c) inform the Agency, not later than fourteen days from the date of terminating any contract, giving details of measures taken by the procuring entity before terminating the contract; and
  - d) not later than seven days after issuing the instruction to amend, alter or vary any procurement contract, submit a report to the Agency of any amendment, alteration or variation of a procurement contract giving details on the reasons, cost implication and approvals.



- (4) The controlling officers of procuring entities and the Chairman of the Independent Review Committee shall submit to the Agency not later than fourteen days after issuing their decisions, copies of the decisions concerning complaints or disputes in procurement proceedings.
- (5) The Agency may, upon receipt of reports of findings from the controlling officer or decision of the Independent Review Committee, recommend to the competent authority to take disciplinary measures against the concerned person or body implicated in the report or decision, as the case may be, in accordance with the provisions of the Act.

#### **44. Procurement Contract and Performance Audits**

- (1) Subject to the criteria as may be prescribed by the Agency, the Agency may, at any time and where circumstances requires, select a procuring entity, project, or contract for audit.
- (2) Before the audit, the Agency shall inform the relevant procuring entity on the intention, objectives and compliance indicators to be used for the audit.
- (3) For the purpose of enabling the Agency to efficiently carry out the audit, procuring entities shall make available all the documents requested for the audit in a timely manner.
- (4) For ease of procurement information retrieval, procuring entities shall be required to keep procurement records in a proper manner as prescribed in paragraph 25 of these procedures.
- (5) Upon completion of the audit and before issuing the final audit report, the Agency shall submit, in writing, the audit findings to the audited procuring entity.
- (6) A procuring entity shall submit to the Agency detailed responses to the audit findings within fourteen days of receiving the audit findings.
- (7) After approval by the appropriate committee of the Board of Directors of the Agency, the Agency shall submit the audit report to the procuring entity together with recommendations of the Agency.

#### **45. Fees for services rendered by the Agency**

- (1) The Agency shall charge fees for services rendered by it as prescribed in Schedule 3 to these procedures.

## **PART 6**

### **PROCUREMENT PLANNING**

#### **46. Annual Procurement Plans**

- (1) Requesting entities shall prepare a procurement plan for each financial year and shall revise them as appropriate during the course of each year.
- (2) Annual procurement planning shall be integrated with applicable budget processes and based on indicative or approved budgets, as appropriate.
- (3) The annual procurement plan for each procuring entity shall include –
  - (a) a list of the goods, works and services required;

- (b) a schedule of the delivery, implementation or completion dates for all goods, works and services required;
  - (c) an indication of which items can be aggregated for procurement as a single package or for procurement through any applicable arrangements for common use items in accordance with section 37 of the Act;
  - (d) an estimate of the value of each package of goods, works or services required and details of the budget available and sources of funding;
  - (e) an indication of the rules applicable to the procurement, where any procurement is not subject to these procedures;
  - (f) an indication of the anticipated procurement method for each procurement requirement, including any need for pre-qualification, and the anticipated time for the complete procurement cycle, taking into account the applicable approval requirements; and
  - (g) an indication of the lead procuring entity expected to manage the procurement.
- (4) Requesting entities shall submit a copy of their annual procurement plan, and each update, to the Technical Secretariat and the Agency not later than fourteen days after their approval by the appropriate budget approving authority.

**47. Unplanned Procurement**

- (1) Where a requesting entity needs to procure goods, works or services which are not included in its procurement plan, it shall –
- (a) complete a procurement requisition in accordance with paragraph 48;
  - (b) mark the requisition as unplanned procurement, providing an explanation of why it was not planned and indicate the source of funding for such procurement;
  - (c) update its procurement plan to include the additional goods, works or services and ensure that an updated version is submitted to the Technical Secretariat and the Agency in accordance with paragraph 46.

**48. Procurement Requisition and Allocation of Funds**

- (1) Every procurement requirement shall be documented by a procurement requisition, which shall include –
- (a) a statement of requirements for the goods, works or services, in accordance with paragraph 49;
  - (b) the estimated value of the fully delivered or completed goods, works or services; and
  - (c) details of the funds budgeted for the requirement.
- (2) The requesting entity shall ensure that the estimated value is realistic and based on up-to-date information on economic and market conditions.
- (3) The requisition shall be approved by the controlling officer, or by an officer or officers designated by him to perform this function, prior to the initiation of procurement proceedings. The approval of requisitions shall include confirmation of the -
- (a) need for the items listed and authority to proceed with procurement; and
  - (b) availability of funds for the procurement.
- (4) Approved requisitions shall be submitted to the appropriate procuring entity to initiate procurement proceedings.

- (5) The procuring entity, conducting procurement proceedings, shall be responsible for notifying and liaising with the Government Tender Board or other approvals authority, the Technical Secretariat and any other entity or individual required to provide input to the procurement process.

**49. Statement of Requirements**

- (1) All statements of requirements shall give a correct and complete description of the goods, works or services and their intended purpose or use.
- (2) The statement of requirements shall be -
- (a) included in the invitation document by which tenderers will be informed of the requirements of the requesting entity;
  - (b) used in evaluation to determine whether a tenderer meets the requirements of the requesting entity, as specified in the invitation document, and where appropriate, to determine the quality of the tender; and
  - (c) included in the contract to define the goods, works or services being procured.
- (3) The statement of requirements included in the invitation document shall be prepared with a view to -
- (a) creating fair and open competition; and
  - (b) ensuring that the goods, works or services are fit for the purpose for which they are being procured and are of appropriate quality.
- (4) To the extent possible, the statement of requirements shall be based on the relevant objective technical and quality characteristics of the goods, works or services to be procured.
- (5) In preparing the statement of requirements, the requesting entity shall ensure that it seeks technical advice, where required.

**50. Statement of Requirements for Goods**

- (1) In addition to the provisions of paragraph 49, a statement of requirements for goods shall provide a complete, precise and unambiguous description of the goods required and shall include, where appropriate -
- (a) a list of the goods and the quantities required, including any incidental services or works, such as delivery, installation, commissioning, maintenance, repair, user training or the provision of after-sales services;
  - (b) a delivery and completion schedule;
  - (c) specifications; and
  - (d) drawings.
- (2) Specifications shall include, where appropriate -
- (a) the purpose and objectives of the goods;
  - (b) a full description of the requirement;
  - (c) a generic specification to an appropriate level of detail;
  - (d) a functional description of the goods, including any environmental or safety features;
  - (e) performance parameters, including outputs, timescales and any indicators or criteria by which satisfactory performance can be judged;

- (f) process and materials descriptions;
  - (g) dimensions, symbols, terminology language, packaging, marking and labelling requirements;
  - (h) inspection and testing requirements; and
  - (i) any applicable standards.
- (3) Statements of requirements for goods shall not include any reference to a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item, unless there is no other sufficiently precise or intelligible way of describing the requirement, in which case the words “or equivalent” shall be included and the description shall serve only as a benchmark during the evaluation process.
- (4) Notwithstanding the provisions of sub-paragraph (3), where a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item is required for reasons of technical compatibility, servicing, maintenance or preservation of warranty conditions, such description may be used, subject to written justification.

#### **51. Statement of Requirements for Works**

- (1) In addition to the provisions of paragraph 49, a statement of requirements for works shall provide a complete, precise and unambiguous description of the works required and shall include, where appropriate –
- (a) a description of the scope of the works, which may include, but not be limited to design, construction or installation of equipment;
  - (b) the purpose and objectives of the works;
  - (c) the duration or completion schedule for the works;
  - (d) details of the supervision requirements, working relationships and other administrative arrangements;
  - (e) drawings and/or design requirements;
  - (f) specifications and standards;
  - (g) bills of quantities or equivalent; and
  - (h) inspection and testing requirements.

#### **52. Statement of Requirements for Services**

- (1) In addition to the provisions of paragraph 49, a statement of requirements for services shall provide a complete, precise and unambiguous description of the services required and shall include, where appropriate –
- (a) a background narrative to the required services;
  - (b) the objectives of the services and targets to be achieved;
  - (c) a list of specific tasks or duties;
  - (d) deliverables or outputs for the assignment;
  - (e) the role, qualifications or experience required for any key staff;
  - (f) management and reporting lines for the supplier, including administrative arrangements and reporting requirements;
  - (g) any facilities, services or resources to be provided by the procuring entity;

- (h) inspection or quality testing requirements or indicators of successful performance; and
- (i) the duration or completion schedule.

**53. Individual Procurement Plans**

- (1) The procuring entity shall prepare a procurement plan for each –
  - (a) individual procurement requirement with an estimated value in excess of the threshold for use of the request for quotations method specified in Schedule 2; and
  - (b) aggregate procurement requirement for common use items.
- (2) Individual procurement plans shall include -
  - (c) a description of the requirement, including the schedule required for delivery, implementation or completion of the goods, works or services and any division into lots;
  - (d) the estimated value of the requirement and, where applicable, individual lots;
  - (e) the proposed procurement method, in in terms of Part 7 hereof and section 42(2) of the Act in respect of goods, works, non-consulting services, and consultancy services;
  - (f) an indication of whether pre-qualification will be required;
  - (g) an estimate of the time required for each stage in the procurement cycle, taking into account publication requirements and the applicable approval requirements;
  - (h) the proposed type of contract; and
  - (i) any other relevant information.

**PART 7**

**PROCUREMENT METHODS**

**54. Open Tendering**

- (1) Open tendering is the procurement method for goods, works and non-consulting services which is open to participation on equal terms by all eligible tenderers, through advertisement of the opportunity.
- (2) The objective of open tendering is to obtain value for money and promote private sector participation through the maximum possible competition.
- (3) Procuring entities shall use open tendering for the procurement of all goods, works and non-consulting services, except where the procurement meets the conditions for use of an alternative method in accordance with this Part.
- (4) Tendering shall be international where -
  - (a) the goods, works or services are not available under competitive price and other conditions from at least three suppliers in Swaziland; or,
  - (b) regional or international participation is required in accordance with an agreement entered into by the Government.
- (5) Open tendering may be conducted with or without pre-qualification.

**55. Limited Tendering**

- (1) Limited tendering is the procurement method for goods, works and non-consulting services where tenders are obtained by direct invitation to a shortlist of tenderers, without open advertisement.
- (2) The objective of limited tendering is to obtain competition and value for money to the extent possible where the circumstances do not justify or permit the use of open tendering.
- (3) Limited tendering may be used where -
  - (a) the procurement involves defence or national security as provided for under section 4(2) of the Act;
  - (b) the suppliers, have already been pre-qualified further to paragraph 63 of these procedures;
  - (c) the goods, works, or services required are of a specialised nature or can be obtained from a limited number of specialised contractors, service providers or reputable sources;
  - (d) there is an urgent need for the goods, works or services such that there would be insufficient time for a procuring entity to engage in open national or international tendering, and that the circumstances giving rise to the urgency could not have been foreseen by a procuring entity and have not been caused by dilatory conduct on its part; or there is a need to achieve certain social objectives by calling for participation of local communities or local firms.
  - (e) where no tenders were received under an open tender and a new open tender is unlikely to be successful.
- (4) Restricted tendering may, in particular, be used by a procuring entity for setting aside contracts for the purpose of building the capacity of citizen service providers.
- (5) The justification for restricting procurement under sub-paragraph (2) and (3) shall be prescribed in the record of procurement proceedings made pursuant to paragraph 25.
- (6) Except where tenderers have already been prequalified, a procuring entity issuing a restricted tender shall seek tenders from a broad list of potential tenderers with a view to assuring competitive prices.
- (7) In cases where only a limited number of tenderers are expected to tender, the list shall include all such tenderers.
- (8) Except for advertisement and instances where the issuance of tenders, in terms of these procedures, are not required, the proceduress for competitive tendering prescribed in these procedures shall apply.

**56. Request for Proposals**

- (1) Request for proposals is the procurement method for consulting services where proposals are obtained from a shortlist of tenderers, which may be developed with advertisement of the opportunity unless an exception excluding publication is expressly provided for in these procedures.
- (2) The objective of the request for proposals method is to obtain competition and value for money through the use of the best possible shortlist for the requirement.

- (3) Procuring entities shall use the request for proposals method for the procurement of all consulting services, except where the procurement meets the conditions for use of an alternative method in accordance with these procedures.

**57. Request for Quotations**

- (1) Request for quotations is the procurement method which compares quotations from a number of tenderers.
- (2) The objective of request for quotations is to obtain competition and value for money to the extent possible, while maintaining economy and efficiency, where the circumstances do not justify the use of open or limited tendering.
- (3) Request for quotations may be used where the estimated value of the goods, works or non-consulting services does not exceed the threshold specified in Schedule 2.

**58. Single Source Procurement**

- (1) Single source procurement is the procurement method where a tender is obtained directly from a single tenderer, without competition. Such single source procurement shall be carried out in accordance with the provisions of Part 11 of the these procedures.
- (2) The objective of single source procurement is to achieve timely and efficient procurement, where the circumstances or value do not justify or permit the use of competition.

**59. Selection of Individual Consultants**

- (1) Individual consultants may be employed on assignments for which the experience and qualifications of the individual are the paramount requirement and teams of personnel are not required. Such selection of individual consultants shall be carried out in accordance with the provisions of Part 12 of the these procedures.

**60. Two Stage Tendering**

- (1) Two stage tendering is the procurement process where the procuring entity, in the first stage, invites tenderers to submit technical proposals containing their respective solution in order to obtain tenderers' assistance in defining the technical requirement and the scope of work.
- (2) The procuring entity, in the first stage, may engage tenderers in discussion. Thereafter, in the second stage, the procuring entity invites all tenderers whose proposals have not been rejected in terms of Part 13 of these procedures, to present final tenders.
- (3) The provisions of these procedures for open tendering shall apply to two stage tendering proceedings, except where those provisions of open tendering are derogated from, in terms of these procedures.

**61. Prohibition on Disaggregation**

- (1) Procuring entities shall not divide procurement requirements which could be procured as a single contract to avoid the use of open tendering or any other procurement method involving competition.
- (2) Notwithstanding the prohibition on disaggregation of procurement in sub-paragraph (1) procuring entities may divide a procurement requirement, which could be procured as a single contract, into a package, consisting of several lots which are to be tendered

together, where it is anticipated that the award of several separate contracts may result in the best overall value for the procuring entity.

## **PART 8**

### **PROCEDURES FOR TENDERING**

#### **SECTION A – Tendering Procedures**

#### **62. Inviting Tenders**

- (1) Tenders shall be invited –
  - (a) through the publication of a tender notice in accordance with paragraph 65 in the case of open tendering, where no pre-qualification has been conducted;
  - (b) from the list of pre-qualified applicants in the case of open tendering, where a pre-qualification has been conducted in accordance with paragraph 63; and
  - (c) from a shortlist of tenderers in accordance with paragraph 66 in the case of limited tendering.

#### **63. Pre-qualification**

- (1) Pre-qualification may be used under open tendering to obtain a list of pre-qualified tenderers who have been assessed to be capable of effectively performing the proposed contract. Pre-qualification may be used where-
  - (a) the goods, works or services are highly complex, specialised or require detailed design or methodology; or,
  - (b) the costs of preparing a detailed tender would discourage competition; or,
  - (c) the evaluation is particularly detailed and the evaluation of a large number of tenders would require excessive time and resources from a procuring entity.
- (2) Pre-qualification may also be used to pre-qualify tenderers for a group of similar contracts, such as regular procurements of common use items.
- (3) Where the procuring entity conducts pre-qualification, it shall publish a pre-qualification notice in accordance with paragraph 33, inviting all potential applicants to submit applications to pre-qualify.
- (4) The procuring entity shall promptly issue pre-qualification documents to all applicants who request them and shall maintain a record of all applicants to whom documents are issued.
- (5) The pre-qualification document shall contain all the information required by applicants to prepare and submit applications to pre-qualify and shall be drafted using the standard document issued in accordance with paragraph 31.
- (6) Where pre-qualification is for a group of contracts, the pre-qualification notice and document shall contain an estimate of the period of time covered by the pre-qualification, an estimate of the number and value of contracts to be awarded and any categories to be used in pre-qualifying applicants.
- (7) The procuring entity shall allow a sufficient period of time, to enable applicants to prepare and submit their applications to pre-qualify. The minimum period of time for submission of applications to pre-qualify shall be -
  - (a) 14 days where the publication of notices is national only; or,
  - (b) 21 days where the publication of notices is regional or international.



**64. Evaluation of Applications to Pre-qualify**

- (1) All applications to pre-qualify received on time shall be evaluated by an evaluation committee appointed in accordance with paragraph 76. Evaluation shall be on a pass or fail basis against the criteria in the pre-qualification document.
- (2) The evaluation committee shall prepare a record of its evaluation of applications, which shall clearly state which applicants were determined to be qualified and the reasons why any applicants were determined to be not qualified.
- (3) Where pre-qualification is conducted for a group of similar contracts:
  - (a) a limit on the number or total value of awards to a tenderer may be made on the basis of the tenderer's qualifications; and
  - (b) where appropriate, applicants may be qualified in different categories with differing levels of qualifications.
- (4) The results of the pre-qualification, including the record of the evaluation of applications, shall be submitted to the approvals authority for authorisation.
- (5) The procuring entity shall invite all pre-qualified applicants, or all pre-qualified applicants in the appropriate category, to submit tenders.

**65. Tender Notices**

- (1) Tender notices shall be published in accordance with paragraph 33 and shall contain at least-
  - (a) the name, address and contact details of the procuring entity;
  - (b) the nature of the procurement requirement, including the quantity of goods, works or services and the location and timetable for delivery or performance of the contract;
  - (c) a statement of any key technical requirements, eligibility, qualification requirements and evaluation criteria;
  - (d) instructions on obtaining the invitation documents, including any price payable; and
  - (e) instructions on the location and deadline for submission of tenders.
- (2) In order to minimise costs, tender notices published in the local media shall contain a shortened version of the requirement in sub-paragraph (1). The Agency's website shall contain the full versions of all requirements and the notices published on the Agency's website shall serve as the official notice in all instances.

**66. Shortlists**

- (1) Where the procuring entity invites tenders from a shortlist of tenderers, the shortlist shall include-
  - (a) all potential tenderers, where limited tendering is used on the grounds of a limited number of sources, in accordance with paragraph 55; or,
  - (b) at least four tenderers in all other cases.
- (2) Tenderers shall not be included on a shortlist unless they are expected to fully satisfy the procuring entity's requirements, including, but not limited to, those related to eligibility, qualifications, capacity, resources and experience.

- (3) The proposed shortlist shall be authorised by the approvals authority, prior to issue of the invitation documents.

**67. Invitation Documents**

- (1) The invitation document shall contain all the information required by tenderers to prepare and submit tenders and shall be drafted using the standard document issued in accordance with paragraph 31.
- (2) All invitation documents shall contain -
- (a) clear instructions on the management of the procurement process and the applicable rules;
  - (b) a clear statement of requirements giving a description of the goods, works or services to be procured;
  - (c) a clear explanation of the evaluation process and a statement of all evaluation, eligibility and qualification criteria to be applied; and
  - (d) the proposed form and conditions of contract.
- (3) The tender document shall be authorised by the approvals authority, prior to its issue.

**68. Minimum Tendering Periods**

- (1) The tendering period shall start on the date of the first publication of the tender notice or issue of the invitation document to all pre-qualified or shortlisted tenderers and shall finish on the date of the tender submission deadline.
- (2) The minimum tendering period shall be-
- (a) 28 days for open tendering where the notice is published in Swaziland only;
  - (b) 42 days for open tendering where the notice is published internationally;
  - (c) 21 days for limited tendering where shortlisted tenderers are national only; or
  - (d) 28 days for limited tendering where the shortlist includes foreign tenderers.
- (3) Notwithstanding the provisions of sub-paragraphs (c) and (d), where limited tendering is used on grounds of urgency, in accordance with paragraph 55, the tendering period may be reduced to a minimum of 7 days.

**69. Tender Securities**

- (1) A procuring entity shall require tender securities for all procurement requirements with an estimated value greater than the threshold for use of limited tendering specified in Schedule 2, in order to deter irresponsible tenders and encourage tenderers to fulfil the conditions of their tenders. The invitation documents shall specify the requirements for a tender security, including form and wording, and the conditions for forfeiture of the security.
- (2) The value of any required tender security shall be expressed as a fixed amount and not as a percentage. The amount shall be not less than two percent of the estimated value of the contract and shall be high enough to deter irresponsible tenders, but not so high as to discourage competition.
- (3) Where the procuring entity requires tenderers submitting tenders to provide a tender security-
- (a) the requirement shall apply to all tenderers;

- (b) the invitation documents shall stipulate that the issuer of the tender security and the confirmer, if any, of the tender security, and the form and terms of the tender security, have to be acceptable to the procuring entity;
  - (c) the confirmation of the acceptability of a proposed issuer or of any proposed confirmer does not preclude the procuring entity from rejecting the tender security on the grounds that the issuer or the confirmer, as the case may be, has become insolvent or otherwise lacks credit worthiness.
- (4) Notwithstanding the provision of sub-paragraph (3)(b) and unless the acceptance by the procuring entity of a tender security would be in violation of laws of Swaziland, a procuring entity shall not reject a tender security on the grounds that the tender security was not issued by an issuer in Swaziland if the tender security and the issuer otherwise conform to the requirements prescribed in the invitation documents.
  - (5) Prior to submitting a tender, a tenderer may request the procuring entity to confirm the acceptability of a proposed issuer of a tender security, or of a proposed confirmer and the procuring entity shall respond promptly to such request.
  - (6) The tender security or tender securing declaration shall be in accordance with the form of the bid security or bid securing declaration included in the invitation documents or any other form approved by the procuring entity prior to the tender submission.
  - (7) The tender security, at the tenderer's option, shall be in the form of a certified cheque, a letter of credit, a bank guarantee from a reputable bank or an insurance bond from a reputable insurance firm.
  - (8) The procuring entity shall specify, in the invitation documents, any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required tender security.
  - (9) Any requirement that refers directly or indirectly to conduct by a tenderer submitting the tender shall not relate to conduct other than:
    - (a) withdrawal or modification of the tender after the deadline for submission of tenders, or before the deadline, if so stipulated in the invitation documents;
    - (b) disagreement to arithmetical correction made to the tender prices;
    - (c) failure to sign the procurement or disposal contract if required by the procuring entity to do so; and/or
    - (d) failure to provide a required security for the performance of the contract or to comply with any other condition precedent to signing the procurement or disposal contract specified in the invitation documents.
  - (10) Subject to sub-paragraph (6), tenderers shall be allowed to submit bank guarantees directly issued by a bank of their choice, or insurance bonds issued directly by a firm of their choice located in any country.
  - (11) The tender security or tender securing declaration shall remain valid for a period of not less than twenty eight days beyond the validity period of the tender, in order to provide the procuring entity time to act if the security is called for.
  - (12) The tender securities of unsuccessful tenderers shall be released not more than thirty days after the expiration of the tender validity period, as extended where appropriate in accordance with paragraph 38 or upon the award of contract, whichever is earlier.

- (13) The tender security or tender securing declaration of the successful tenderer shall be discharged when the tenderer has signed the contract and furnished the required performance security to the satisfaction of the procuring entity.
- (14) Tender securing declaration shall apply for procurement the value of which does not exceed the threshold for exclusive preference as provided for under a preference scheme that is promulgated in accordance with the laws of Swaziland.
- (15) The procuring entity shall make no claim to the amount of the tender security, and shall return within 30 days, or procure the return of the tender security document, after whichever of the following that occurs earliest:
  - a) the expiry of the tender security;
  - b) the entry into force of a procurement contract and the provision of a security for the performance of the contract if such a security is required by the invitation documents;
  - c) the rejection by the procuring entity of all tenders pursuant to these procedures; or
  - d) the withdrawal of the tender prior to the deadline for the submission of tenders, unless the invitation documents stipulate that no such withdrawal is permitted.

**70. Tender Securing Declaration**

- (1) Tender securities shall not be required from tenderers participating in a preference scheme that is promulgated in accordance with the laws of Swaziland.
- (2) Notwithstanding sub-paragraph (1), tenderers shall be required to complete and sign the Tender Securing Declaration Form set out in Schedule 7 to these procedures.
- (3) Any tenderer who fails to comply with the terms of the Tender Securing Declaration Form shall be liable to suspension pursuant to section 55 of the Act.

**71. Clarification and Amendment of Tender Documents**

- (1) The invitation document shall state that a tenderer may seek clarification of the invitation document in writing from the procuring entity and shall state the final date after which such clarification may not be sought. Such date shall allow adequate time for tenderers, including foreign tenderers, to receive and study the invitation document.
- (2) Where a request for clarification is received, the procuring entity shall promptly provide a clarification in writing. The clarification shall be copied to all tenderers and shall include a description of the inquiry, but without identifying the source.
- (3) At any time prior to the deadline for submission of tenders, the procuring entity may, either at its own initiative or in response to a request for clarification from a tenderer, amend the invitation document by issuing an addendum.
- (4) Any amendment shall be issued in writing and the same information shall be provided to all tenderers at the same time. All amendments shall be numbered sequentially.
- (5) To give tenderers reasonable time in which to take a clarification or amendment into account in preparing their tenders, the procuring entity may, at its discretion, extend the deadline for the submission of tenders, through the issue of an amendment.
- (6) All clarifications and addenda to the invitation document shall be binding on tenderers.

- (7) All amendments to the invitation documents shall be approved by the approvals authority for that tender prior to that amendment taking effect.

**72. Pre-Bid Meetings and Site Visits**

- (1) The procuring entity may organise -
- (a) a pre-bid conference in order to brief tenderers or to offer the opportunity for them to seek clarifications; and/or
  - (b) a site visit, to enable tenderers to gain access to the site for delivery of any proposed works or services.
- (2) Details of pre-bid conferences and site visits, including the date, time and location, shall be included in the invitation document and any tender notice.
- (3) The date of any pre-bid conference or site visit shall be sufficiently early in the tendering period, to enable tenderers to take the information into account in preparing their tenders, but shall not be so early as to make attendance difficult.
- (4) The procuring entity shall prepare minutes of any pre-bid conference and shall promptly send them to all tenderers to whom the invitation document has been issued.
- (5) The minutes shall include -
- (c) all information provided as part of any briefing;
  - (d) details of any clarifications requested, but without identifying the source of the inquiry;
  - (e) the details of responses provided to clarifications; and
  - (f) a record of attendance.
- (6) Following any pre-bid conference or site visit, the procuring entity shall, where required, issue clarifications or amend the invitation document, in accordance with paragraph 71.

**73. Receipt of Tenders**

- (1) The tender document shall clearly state the date and time of the tendering deadline and that late tenders shall be rejected.
- (2) The procuring entity shall ensure that -
- (a) a tender box, or other means of receiving tenders, is made available to tenderers;
  - (b) tenders are kept confidential, and in the case of sealed tenders unopened, until the time for opening of tenders; and
  - (c) tendering is closed at the precise date and time of the tendering deadline and no late tenders are accepted.
- (3) Late tenders shall be labelled as late, stating the date and time of actual receipt and shall be returned unopened to the tenderer.
- (4) Immediately after the tender closing, the Tender Board shall assume full responsibility for the proposals received, which proposal received shall be taken by the Tender Board to the location for proposal opening.

**74. Modification or withdrawal of tenders**

- (1) Unless otherwise stipulated in the invitation documents, a tenderer may modify, or withdraw the tender prior to the deadline for the submission of tenders without forfeiting its tender security.
- (2) The modification or notice of withdrawal shall be effective if it is received by the procuring entity prior to the deadline for submission of tenders.

**75. Tender Opening**

- (1) The Tender Board shall open in public all tenders received on time at the date, time and location indicated in the tender document.
- (2) The time for tender opening shall be the same as, or immediately after, the time of the deadline for submission of tenders.
- (3) Tenderers, or their representatives, shall be permitted to attend the opening and details of the tender opening shall be included in the tender document.
- (4) All tenders received on time shall be opened in turn and the details indicated in the tender document read out, which shall include at least -
  - a) the tenderers' names;
  - b) the tender prices and the total amount of each tender, save for tenders for common used items and services, where unit price may not be read out due to the absence of a tender sum;
  - c) written notifications of tender modifications and withdrawals;
  - d) any alternative tenders, if they have been requested or permitted;
  - e) any discounts;
  - f) the presence of the requisite tender security or tender securing declaration as the case may be; andsuch other details as specified in the tender document.
- (5) All tenders opened shall be stamped on key pages by the chairperson of the tender opening. Key pages shall include at least priced and signed pages.
- (6) With the exception of late tenders, no tender shall be accepted, rejected or evaluated in any way at the tender opening.
- (7) Any discrepancies or missing documents shall be noted in the record of tender opening.
- (8) The Tender Board shall make a record of the tender opening, which shall be kept as part of the procurement record. The record shall include at least the details read out in accordance with sub-paragraph (4) and the names of all staff and tenderers' representatives attending the opening.
- (9) All tenderers' representatives attending the tender opening shall be requested to sign the record, but the absence of any signature shall not invalidate the record.
- (10) The opened tenders shall immediately be taken to a secure location, where they shall be kept until the evaluation begins.
- (11) In the case of a request for proposals method, the announcement shall include the fact that no price envelope has been opened.

**SECTION B – Evaluation**

**76. Evaluation Committees**

- (1) The controlling officer of the procuring entity shall appoint an ad hoc evaluation committee for each procurement requirement and such committee shall be comprised of persons that meet fit-and-proper requirements as prescribed by the Agency.
- (2) The evaluation committee shall be responsible for the evaluation of tenders, proposals or quotations in accordance with these procedures and the invitation document and the preparation of an evaluation report or reports for submission to the approvals authority.
- (3) The number and level of expertise of members of the evaluation committee shall depend on the value and complexity of the procurement requirement, but shall be not less than three members.
- (4) The evaluation committee shall include skills, knowledge and experience relevant to the procurement requirement as far as possible, which may include -
  - (a) technical skills relevant to the procurement requirement;
  - (b) end user representation;
  - (c) procurement and contracting skills;
  - (d) financial management or analysis skills; and/or,
  - (e) legal expertise.
- (5) The evaluation committee may seek guidance and advice from the Technical Secretariat where required.
- (6) For purposes of transparency, section 30 of the Act on “Disclosure of Interest” shall also be applicable to members of the Evaluation Committee. Members of the Tender Board or any other approvals authority shall not be members of the evaluation committee. Where required, the evaluation committee may include members who are external to the procuring entity.

**77. General Evaluation Rules**

- (1) All invitation documents shall clearly state the methodology and criteria to be used in the evaluation of tenders and the determination of the best evaluated tender.
- (2) No methodology or criteria, other than those stated in the invitation document, shall be taken into account and all criteria shall be applied equally to all tenders.
- (3) The evaluation committee may in writing ask tenderers for written clarification of their tenders in order to assist in evaluation, but no changes in the substance of tenders, including changes in price, shall be permitted after the date and time of tender closing, unless otherwise provided for in these procedures.
- (4) The failure of a tenderer to reply to a request for clarification in writing may result in the rejection of its tender.
- (5) The evaluation committee’s determination of a tender’s responsiveness shall be based on the contents of the tender itself, subject to any clarifications received.
- (6) Where a tender is substantially responsive, the evaluation committee may waive, clarify or correct any non-conformity, error or omission, which does not constitute a material deviation.

- (7) The non-material non-conformity, error or omission shall be quantified in monetary terms to the extent possible and taken into account in the financial evaluation and comparison of tenders.
- (8) A substantially responsive tender is one which conforms to all the instructions, requirements, terms and conditions of the tender documents, without material deviation, reservation or omission.
- (9) The evaluation committee may correct purely arithmetical errors in tenders in accordance with the procedure stated in the tender document.
- (10) Tenderers shall be notified in writing of any arithmetical corrections and requested to provide written agreement to the correction.
- (11) Any tenderer who does not provide written acceptance of the correction of an arithmetical error shall be rejected and the tender security of that tenderer may be forfeited.
- (12) During the evaluation process no member of the evaluation committee shall be permitted to remove the proposals from the secure location where such proposals are kept.

#### **78. Evaluation Methodology and Criteria**

- (1) The methodology for the evaluation of tenders shall consist of -
  - (a) a preliminary examination to determine whether tenders are complete and are responsive to the basic instructions and requirements of the tender document;
  - (b) a technical evaluation to compare each tender to the technical requirements of the statement of requirements on a pass or fail basis, to determine whether the tenders are substantially responsive; and
  - (c) a financial evaluation and comparison to determine the tender with the lowest evaluated price.
- (2) Where appropriate, the procuring entity may include additional evaluation criteria in the tender document, which shall be taken into account in determining the evaluated price of each tender. Such evaluation criteria shall be related to the performance, characteristics or terms and conditions of a tender, such as delivery or completion schedule, payment schedule, the cost of spare parts or after sales service, operating or maintenance costs or the productivity of equipment.
- (3) Any additional evaluation criteria shall be designed to measure the advantage or disadvantage of a factor to the procuring entity. Such advantage or disadvantage shall be quantified in monetary terms and applied as an increase or decrease to the tender price, for purposes of evaluation only. The tender document shall state the methodology for calculating and applying the adjustment to the tender price.

#### **79. Preliminary Examination**

- (1) The evaluation committee shall conduct a preliminary examination to determine whether tenders are complete and are responsive to the basic instructions and requirements of the tender document. The preliminary examination shall determine whether -
  - (a) the tender has been submitted in the correct format;
  - (b) any required tender security has been submitted, in the correct form and amount and valid for at least the period required;



- (c) the tender has been submitted without material reservations or deviations from the terms and conditions of the tender document;
  - (d) the tender has been correctly signed and authorised;
  - (e) the correct number of copies of the tender have been submitted;
  - (f) the tender is valid for at least the period required;
  - (g) all key documents and information required have been submitted;
  - (h) any required samples have been submitted;
  - (i) the tender meets any other key requirements of the tender document; and
  - (j) there have been any alterations or changes to the tender documents, except those required as part of the tender requirement.
- (2) Any deviations, which are considered to be material deviations, shall result in rejection of the tender and such tenders shall not be subject to technical evaluation. Deviations which are considered to be non-material shall not result in rejection of the tender.
- (3) A material deviation or reservation is one that:-
- a) affects in any substantial way the scope, quality, or execution of the works;
  - b) limits in any substantial way, inconsistent with the Tender Documents, the Procuring Entity's rights or the Tenderer's obligations under the Contract; or
  - c) if rectified, would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.
- (4) The preliminary examination shall also determine whether tenderers are eligible in accordance with paragraph 20, where this has not been determined prior to inviting tenders.

**80. Technical Evaluation**

- (1) The evaluation committee shall conduct a technical evaluation by comparing each tender to the technical requirements of the statement of requirements in the tender document, to determine whether the tenders are substantially responsive.
- (2) The factors taken into account shall be those indicated in the tender document only and may include, but not be limited to -
- (a) conformity to specifications, standards, drawings or terms of reference, without material deviation or reservation;
  - (b) satisfactory understanding of an assignment, as demonstrated by any methodology or design; or,
  - (c) suitable staffing or arrangements for supervision or management of an assignment.
- (3) The evaluation shall not take into account any requirements which were not included in the tender document.
- (4) Any material deviations shall result in rejection of the tender and such tenders shall not be subject to financial evaluation and comparison.

**81. Financial Evaluation and Comparison**

- (1) The Evaluation Committee shall conduct a financial evaluation and comparison to determine the evaluated price of each tender and determine the lowest priced tender, which is substantially responsive to the requirements of the tender document.
- (2) The evaluated price for each tender shall be determined by -
  - (a) taking the tender price, as read out at the tender opening;
  - (b) correcting any arithmetic errors, in accordance with the methodology stated in the tender document;
  - (c) applying any non-conditional discounts offered in the tender;
  - (d) making adjustments for any non-material non-conformity, error or omission;
  - (e) applying any additional evaluation criteria, through an increase or decrease to the tender price;
  - (f) converting all tenders to a single currency, using the currency and the source and date of exchange rate indicated in the tender document; and
  - (g) applying any margin of preference indicated in the tender document.
- (3) Tenders shall be compared by ranking them according to their evaluated price and determining the tender with the lowest evaluated price, which shall be the best evaluated tender.
- (4) Where the tender document includes more than one lot and permits tenderers to offer discounts, which are conditional on the award of one or more lots, the evaluation committee shall conduct a further financial evaluation, to determine the lowest evaluated combination of tenders.
- (5) Where the lowest priced tender appears to be abnormally priced, the evaluation committee may request a breakdown and justification of prices in order to verify the responsiveness of the tender or the tenderer's qualifications. Where a tender is uneconomically priced without justification, the evaluation committee may recommend the rejection of the tender. The budget estimate by the procuring entity may be used as guidance in assessing pricing, but variation from the estimate shall not be used as the sole grounds for rejection of a tender without further justification.

**82. Post-Qualification**

- (1) Where appropriate, a post-qualification may be undertaken in accordance with the criteria in the tender document, to determine whether the best evaluated tenderer has the capability and resources to effectively carry out the contract.
- (2) Where a tenderer is determined not to be qualified, the tender shall be rejected and a post-qualification conducted on the tenderer who submitted the next lowest evaluated responsive tender.
- (3) Where a pre-qualification has been conducted, the evaluation committee shall verify the information submitted by the tenderer who submitted the lowest evaluated responsive tender.
- (4) Where a pre-qualification has been conducted and where the tenderer no longer meets the qualification criteria, the tender shall be rejected and the qualifications of the next best evaluated tenderer verified.

**83. Evaluation Report and Award Recommendation**

- (1) The evaluation committee shall prepare an evaluation report for submission to the approvals authority.
- (2) The evaluation report shall include -
  - (a) a project overview;
  - (b) the invitation document;
  - (c) a summary of the tenders received and opened;
  - (d) the results of the preliminary examination;
  - (e) the results of the technical evaluation;
  - (f) reasons why any tenders were declared non responsive;
  - (g) details of any non-material deviations which were accepted and the way in which they were quantified and taken into account in the financial evaluation;
  - (h) the evaluated price of each tender, showing any corrections or adjustments to the tender price and any conversion to a common currency;
  - (i) the ranking of the tenders, according to their total evaluated price;
  - (j) a statement of the best evaluated tender, for each lot where applicable;
  - (k) a summary of the application of any conditional discounts and the best evaluated combination of tenders, where applicable;
  - (l) the results of any post-qualification;
  - (m) a recommendation to award the contract or contracts to the best evaluated tender or combination of tenders, or other appropriate recommendation, such as cancellation of the procurement process or re-tendering; and
  - (n) the relevant budget approval.
- (3) The evaluation report and recommendations shall be approved by the approvals authority, prior to proceeding with contract award or any other action, such as cancellation of the procurement process or re-tendering.
- (4) A copy of the original tender document together with the evaluation report and recommendations shall be made available to the approvals authority.

**84. Negotiations**

- (1) Negotiations shall not be permitted under the open and limited tendering methods.

**PART 9**

**PROCEDURES FOR REQUEST FOR PROPOSALS**

**SECTION A –Invitation Procedures**

**85. Selection of Consultants**

- (1) Tenderers shall normally be selected through the publication of a notice inviting expressions of interest and development of a shortlist in accordance with paragraphs 86 and 87.
- (2) A shortlist may be developed without publication of a notice inviting expressions of interest in accordance with paragraph 88 where-

- (a) the services are only available from a limited number of consultants; or,
  - (b) there is insufficient time for publication of a notice in an emergency situation; or,
  - (c) the estimated value does not exceed the threshold specified in Schedule 2.
- (3) For commonly required consultancy services, a pre-qualification for a group of contracts may be conducted in accordance with paragraph 63. For such services, a shortlist may be developed without publication of a notice inviting expressions of interest in accordance with paragraph 88.

**86. Notices Inviting Expressions of Interest**

- (1) Notices requesting expressions of interest shall invite all potential applicants to submit expressions of interest. Notices shall be published in accordance with paragraph 33 and shall contain at least-
- (a) the name, address and contact details of the procuring entity;
  - (b) details of the scope of the assignment;
  - (c) a statement of the key criteria for short-listing, which shall be related to the applicant's experience, qualifications, personnel and any other factor related to their ability to successfully perform the assignment;
  - (d) details of the information to be included in the expression of interest, including any information or documentation required to verify the applicant's eligibility or qualifications; and
  - (e) the date, time and address for submission and any special instructions on sealing, marking or submission of expressions of interest.
- (2) Notices seeking expressions of interest shall be published at least 2 weeks prior to the deadline for submission.

**87. Evaluation of Expressions of Interest and Development of Shortlist**

- (1) All expressions of interest shall be evaluated by an evaluation committee appointed in accordance with paragraph 76.
- (2) The evaluation shall be conducted using the criteria stated in the notice inviting expressions of interest, in order to develop a shortlist of tenderers who are expected to be able to meet the procuring entity's requirements. A record of the evaluation of expressions of interest shall be maintained.
- (3) The shortlist shall include sufficient tenderers to ensure effective competition, which shall be between four and six tenderers, wherever possible.
- (4) Where the number of suitable tenderers is greater than six, the applicants who best meet the procuring entity's requirements shall be included on the shortlist.
- (5) Tenderers shall not be included unless they are expected to fully satisfy the procuring entity's requirements, including those related to eligibility, qualifications, capacity, resources and experience.
- (6) The results of the evaluation of the expressions of interest and the proposed shortlist shall be authorised by the approvals authority, prior to issue of the request for proposals document.

**88. Development of Shortlists without Expressions of Interest**

- (7) Where the procuring entity develops a shortlist, without seeking expressions of interest, the shortlist shall include-
  - (a) all potential tenderers, where the services are only available from a limited number of consultants, in accordance with paragraph 85; or,
  - (b) at least three tenderers in all other cases.
- (8) Where a shortlist is developed following a pre-qualification in accordance with paragraph 85, pre-qualified tenderers shall be rotated on successive shortlists to ensure equal opportunities to all pre-qualified tenderers.
- (9) The proposed shortlist shall be authorised by the approvals authority, prior to issue of the request for proposals documents.

**89. Request for Proposals Document**

- (1) The request for proposals document shall contain all the information required by tenderers to prepare and submit proposals and shall be drafted using the standard document issued in accordance with paragraph 31.
- (2) All request for proposals documents shall contain-
  - (a) clear instructions on the management of the procurement process and the applicable rules, including the requirement to submit separate technical and financial proposals and for separate technical and financial evaluations;
  - (b) a clear description of the services required in the form of a statement of requirements;
  - (c) a clear statement and explanation of the selection procedure used and a statement of all evaluation, eligibility and qualification criteria to be applied; and
  - (d) the proposed form and conditions of contract.
- (3) The request for proposals document shall state the estimated man months for the assignment, but the budget for the assignment shall not be disclosed.
- (4) The request for proposals document shall clearly state that no financial information should be included in the technical proposal.
- (5) The request for proposals document shall be authorised by the approvals authority, prior to its issue.
- (6) Request for proposals documents shall only be issued to tenderers on the approved shortlist and any proposals received from tenderers not included on the shortlist shall not be evaluated.

**90. Evaluation Methodology**

- (1) The procuring entity shall select the most appropriate evaluation methodology and shall state such methodology in the invitation document.
- (2) The shall be either-
  - (a) Quality and Cost Based Selection, which takes into account both the quality and the cost of proposals and selects the proposal which offers the optimum balance of quality and cost; or,

- (b) Least Cost Selection, which selects the lowest priced proposal, which meets the procuring entity's technical requirements.
- (3) Quality and Cost Based Selection shall be the preferred selection procedure.
- (4) Least Cost Selection may be used for assignments of a standard or routine nature, where well-established practices and standards exist.

**91. Evaluation Criteria**

- (1) The request for proposals document shall state the evaluation criteria to be applied during the technical evaluation.
- (2) The evaluation criteria shall be designed to assess the ability of tenderers to-
  - (a) perform the assignment, through assessment of their experience, methodology or personnel; or,
  - (b) meet objectives of the assignment, such as the transfer of knowledge or involvement of national consultants in the assignment.
- (3) Each criterion shall be allocated a maximum number of points and the total for all criteria shall equal 100.
- (4) The number of points allocated to each criterion shall be directly related to its importance to the procurement, except that the points allocated to experience may be limited, where experience has already been taken into account in the development of the shortlist.
- (5) The request for proposals document may also include sub-criteria to provide further guidance on the allocation of points under each main criterion.

**92. Minimum Tendering Periods**

- (1) The tendering period shall start on the date of issue of the request for proposals document to all shortlisted tenderers and shall finish on the date of the proposal submission deadline.
- (2) The minimum tendering period shall be-
  - (a) 21 days where the shortlist includes national tenderers only; or,
  - (b) 35 days where the shortlist includes foreign tenderers.
- (3) Notwithstanding the provisions of sub-paragraph (2), where the shortlist is developed without inviting expressions of interest on grounds of urgency in accordance with paragraph 68, the tendering period may be reduced to a minimum of 7 days.

**93. Clarification and Amendment of Request for Proposals Documents**

- (1) Clarifications and amendments to the request for proposals document shall be subject to paragraph 71.

**94. Pre-Bid Meetings**

- (1) The procuring entity may organise a pre-bid conference or site visit in accordance with paragraph 72.

**95. Receipt of Proposals**

- (1) The request for proposals document shall clearly state the date and time of the tendering deadline and that late proposals shall be rejected.
- (2) The procuring entity shall ensure that-

- (a) a tender box, or other means of receiving proposals, is made available to tenderers;
  - (b) proposals are kept confidential, and in the case of sealed proposals unopened, until the time for opening of proposals; and
  - (c) tendering is closed at the precise date and time of the tendering deadline and no late proposals are accepted.
- (3) Late proposals shall be labelled as late, stating the date and time of actual receipt and shall be returned unopened to the tenderer.
- (4) Immediately after the tender closing, the Tender Board shall assume full responsibility for the proposals received, which proposal received shall be taken by the Tender Board to the location for proposal opening.

**96. Opening of Technical Proposals**

- (1) The Tender Board shall open all proposals received on time at the time of, or immediately after, the deadline for submission of proposals.
- (2) All proposals received on time shall have their outer envelopes opened in turn and the technical proposals within opened.
- (3) The details indicated in the request for proposals document shall be read out, which shall include at least-
- (a) the name of the tenderer; and
  - (b) whether or not a separately sealed financial proposal has been submitted.
- (4) All technical proposals opened shall be stamped on key pages by the chairperson of the opening. Key pages shall include at least signed pages.
- (5) With the exception of late proposals, no proposal shall be accepted, rejected or evaluated in any way at the proposal opening. Any discrepancies or missing documents shall be noted in the record of proposal opening.
- (6) The Tender Board shall make a record of the proposal opening, which shall be kept as part of the procurement record. The record shall include at least the details read out in accordance with sub-paragraph (3) and the names of all staff attending the opening.
- (7) The technical proposals shall be taken immediately to a secure location, where they shall be kept until the evaluation begins.
- (8) Financial proposals shall be kept unopened in a secure location, until the time for opening of financial proposals.
- (9) The proposal opening shall be held in public, at the request of a consultant who submitted a proposal, the Tender Board shall disclose the names of the tenderers who submitted proposals.

**SECTION B – Evaluation**

**97. Evaluation Committees**

- (1) An evaluation committee shall be appointed in accordance with paragraph 76.

**98. General Evaluation Rules**

- (1) All request for proposals documents shall clearly state the methodology and criteria to be used in the evaluation of proposals and the determination of the best evaluated proposal.

- (2) No methodology or criteria, other than those stated in the request for proposals document, shall be taken into account and all criteria shall be applied equally to all proposals.
- (3) The evaluation committee may, in writing, ask tenderers for written clarification of their proposals in order to assist in evaluation, but no changes in the substance of proposals, including changes in price, shall be permitted after the date and time of tender closing, unless otherwise provided for in these procedures.
- (4) The failure of a tenderer to reply to a request for clarification in writing may result in the rejection of its proposal.
- (5) The evaluation committee's determination of a proposal's responsiveness shall be based on the contents of the proposal itself, subject to any clarifications received.
- (6) The evaluation committee may correct purely arithmetical errors in proposals in accordance with the procedure stated in the request for proposals document.
- (7) Tenderers shall be notified in writing of any arithmetical corrections and requested to provide written agreement to the correction.
- (8) Any tenderer who does not provide written acceptance of the correction of an of an arithmetical error shall be rejected.
- (9) During the evaluation process no member of the evaluation committee shall be permitted to remove the proposals from the secure location where such proposals are kept.

**99. Evaluation Methodology**

- (1) The methodology for the evaluation of proposals shall consist of-
  - (a) a preliminary examination to determine whether proposals are complete and are responsive to the basic instructions and requirements of the request for proposals document;
  - (b) a technical evaluation to assess the technical quality of proposals against the evaluation criteria on a merit point system, to determine the technical score of each technical proposals and to determine which technical proposals reached the minimum technical score; and
  - (c) a financial evaluation and comparison to determine the best evaluated proposal, according to the specified evaluation methodology.

**100. Preliminary Examination**

- (1) The evaluation committee shall conduct a preliminary examination to determine whether proposals are complete and responsive to the basic instructions and requirements of the request for proposals document. The preliminary examination shall determine whether-
  - (a) the proposal has been submitted in the correct format;
  - (b) the proposal has been submitted without material reservations or deviations from the terms and conditions of the request for proposals document;
  - (c) the proposal has been correctly signed and authorised;
  - (d) the correct number of copies of the proposal have been submitted;
  - (e) a separately sealed financial proposal has been submitted and that no financial details are contained in the technical proposal;



- (f) the proposal is valid for at least the period required;
  - (g) curriculum vitae have been correctly signed, if required;
  - (h) all key documents and information have been submitted; and
  - (i) the proposal meets any other key requirements of the request for proposals document.
- (2) Any material deviations shall result in rejection of the proposal and such proposals shall not be subject to technical evaluation.
- (3) The preliminary examination shall also determine whether tenderers are eligible, in accordance with paragraph 20, where this has not been determined prior to inviting proposals.

**101. Technical Evaluation**

- (1) Each member of the evaluation committee shall independently conduct a technical evaluation of each proposal, awarding scores against each criterion. These scores shall be recorded and the score sheets signed by the evaluators.
- (2) Scores from each member of the evaluation committee shall be compiled and an average score for each proposal shall be calculated from the individual scores awarded by members of the evaluation committee.
- (3) The evaluation committee shall consider any significant deviations from the average score or inconsistencies in scoring and evaluators may be required to justify the scores awarded.
- (4) Where an evaluator has misunderstood a proposal or the criteria or has evaluated proposals in an inconsistent manner, the evaluator may be permitted to adjust his scores, but no evaluator shall be obliged to make adjustments to his scores or permitted to adjust scores without justification.
- (5) Where any score is adjusted, the original score sheet shall be kept as part of the record of the evaluation, the adjusted scores recorded on a new score sheet and the reasons for making adjustments shall be recorded.
- (6) The average score for each proposal shall be its total technical score for evaluation purposes.
- (7) The total technical score of each proposal shall be compared to the minimum technical qualifying mark stated in the request for proposals document.
- (8) Any proposal with a score less than the minimum technical qualifying mark shall be rejected and eliminated from further evaluation.
- (9) All proposals with a score equal to or higher than the minimum technical qualifying mark shall be recommended for financial evaluation.

**102. Technical Evaluation Report**

- (1) The evaluation committee shall prepare a technical evaluation report, which shall include-
- (a) minutes of the opening of technical proposals;
  - (b) the results of the preliminary examination, with reasons why any proposals were rejected;
  - (c) the technical scores awarded by each evaluator for each proposal;

- (d) a summary of the relative strengths and weaknesses of each proposal;
  - (e) an analysis of any significant discrepancies or inconsistencies in scoring and an explanation of any adjustments made to scores;
  - (f) the total technical score for each proposal;
  - (g) a list of the proposals which reached the minimum technical qualifying mark and a recommendation to open the financial proposals of these tenderers; and
  - (h) a recommendation to reject all proposals which did not reach the minimum technical qualifying mark.
- (2) The technical evaluation report shall be submitted to the approvals authority for authorisation, prior to proceeding with the opening and evaluation of financial proposals or the rejection of any proposals.

**103. Opening of Financial Proposals**

- (1) Following authorisation of the technical evaluation report by the approvals authority, the procuring entity shall notify the tenderers, whose proposals are proceeding to the financial evaluation, of the date and time set for the opening of financial proposals.
- (2) The opening date shall not be sooner than 14 days after the notification date where foreign tenderers are included, or 7 days where all tenderers are national.
- (3) The Tender Board shall open the recommended financial proposals at the time, date and location notified to tenderers. Tenderers' representatives shall be permitted to attend and witness the opening.
- (4) Key pages of the financial proposals shall be stamped and the following information read out and recorded-
- (a) the name of the tenderer;
  - (b) the tenderer's total technical score; and
  - (c) the total proposal price.
- (5) The opened financial proposals shall be taken immediately to a secure location, where they shall be kept until the financial evaluation begins.
- (6) The Tender Board shall maintain a record of the financial proposal opening, which shall form part of the procurement record.
- (7) All tenderers' representatives attending the financial opening shall be requested to sign the record, but the absence of any signature shall not invalidate the record.
- (8) Following award and signature of the contract, the financial proposals of tenderers who did not meet the minimum technical qualifying mark shall be returned unopened.

**104. Financial Evaluation for Quality and Cost Based Selection**

- (1) The evaluation committee shall determine the evaluated price of each proposal by-
- (a) correcting any arithmetic errors;
  - (b) determining whether financial proposals are complete and have costed all corresponding inputs in the technical proposal, costing any missing items and adding them to the proposal price;
  - (c) In the case of lump sum contracts the costing of missing items shall not be allowed; and

- (d) converting all proposals to a single currency for purposes of evaluation, using the currency, source and date of exchange rates indicated in the request for proposals document.
- (2) The lowest priced proposal shall be given a financial score of 100 and other proposals shall be given a financial score which is inversely proportional to the lowest evaluated price, using the methodology stated in the request for proposals document.
- (3) The technical and financial scores of each proposal shall be weighted, using the weights stated in the request for proposals document.
- (4) The weighted technical and financial scores shall be added together, to give a total score for each proposal.
- (5) The proposal with the highest total score shall be the best evaluated proposal and shall be recommended for award of contract, subject to any negotiations required.

**105. Financial Evaluation Report for Quality and Cost Based Selection**

- (1) The evaluation committee shall prepare a financial evaluation report, which shall include-
  - (a) minutes of the opening of financial proposals, including the technical scores and proposal prices read out;
  - (b) the evaluated price of each proposal, following any corrections, adjustments and the conversion to a single currency;
  - (c) the financial score of each proposal and the methodology used for allocating financial scores;
  - (d) the weighting of the technical and financial scores;
  - (e) the total score for each proposal;
  - (f) a recommendation to award the contract to the tenderer obtaining the highest total score, subject to any negotiations required; and
  - (g) the currency and price of the proposed contract, subject to any changes following negotiations.
- (2) The financial evaluation report shall be submitted to the approvals authority for authorisation, prior to proceeding with any negotiations required or award of contract.

**106. Financial Evaluation for Least Cost Selection**

- (1) The evaluation committee shall determine the evaluated price of each proposal by-
  - (a) correcting any arithmetic errors;
  - (b) determining whether financial proposals are complete and have costed all corresponding inputs in the technical proposal, costing any missing items and adding them to the proposal price;
  - (c) In the case of lump sum contracts the costing of missing items shall not be allowed; and
  - (d) converting all proposals to a single currency for purposes of evaluation, using the currency, source and date of exchange rates indicated in the request for proposals document.
- (2) All proposals shall be ranked, according to their evaluated price.

- (3) The proposal with the lowest evaluated price shall be the best evaluated proposal and shall be recommended for award of contract, subject to any negotiations required.

**107. Financial Evaluation Report for Least Cost Selection**

- (1) The evaluation committee shall prepare a financial evaluation report, which shall include-
- (a) minutes of the opening of financial proposals, including the technical scores and proposal prices read out;
  - (b) the evaluated price of each proposal, following any corrections, adjustments and the conversion to a single currency;
  - (c) a recommendation to award the contract to the tenderer with the lowest evaluated price, subject to any negotiations required; and
  - (d) the currency and price of the proposed contract, subject to any changes following negotiations.
- (2) The financial evaluation report shall be submitted to the approvals authority for authorisation, prior to proceeding with any negotiations required or award of contract.

**108. Scope of Negotiations**

- (1) Negotiations may relate to-
- (a) minor alterations to the terms of reference, methodology and staffing;
  - (b) minor amendments to the Special Conditions of Contract;
  - (c) mobilisation arrangements, the work-plan and completion schedule; and
  - (d) inputs required from the procuring entity.
- (2) Negotiations shall not be conducted to-
- (a) substantially change the technical quality or details of the proposal, including the tasks or responsibilities of the tenderer; or,
  - (b) materially alter the terms and conditions of contract; or,
  - (c) reduce fee rates or reimbursable costs, except where changes are required to reflect any agreed changes to the technical proposal; or,
  - (d) substantially alter anything which was a deciding factor in the evaluation of proposals.

**109. Procedures for Negotiations**

- (1) Negotiations shall only be held with the tenderer recommended for contract award, except where negotiations fail, and the procuring entity obtains the prior authorisation of the approvals authority, to open negotiations with the next ranked tenderer.
- (2) The procuring entity shall prepare a plan for the negotiations, which shall specify the issues to be negotiated and objectives to be achieved and shall quantify the objectives and set maximum and minimum negotiation parameters.
- (3) The negotiations shall be conducted by not less than two staff of the procuring entity and a member of the Technical Secretariat, who shall not commit the procuring entity to any proposed arrangement or agreements, but shall seek the authorisation of the approvals authority, prior to confirming any agreement reached.

- (4) Staff conducting the negotiations shall prepare minutes of the negotiations, which shall form part of the record of the procurement and shall obtain the tenderer's written agreement that they are a true and accurate record of the negotiations held.
- (5) The negotiations plan shall be approved by the approvals authority prior to negotiations being conducted and the outcome of such negotiations shall be reported to the approvals authority, with the report including the contract award recommendation.

## **PART 10**

### **PROCEDURES FOR REQUEST FOR QUOTATIONS**

#### **110. Invitation for Quotations Document**

- (1) The request for quotations document shall contain all the information required by tenderers to prepare and submit quotations and shall be drafted using the standard document issued in accordance with paragraph 31.
- (2) The request for quotations document shall be authorised by the approvals authority, prior to its issue.

#### **111. Shortlists**

- (1) Written quotations shall be requested from a shortlist of tenderers. The shortlist shall be authorised by the approvals authority, prior to issue of the request for quotations document.
- (2) The shortlist shall include sufficient tenderers to ensure effective competition, but in any case, no less than four quotations shall be obtained, unless three or less suitable sources exist.
- (3) Tenderers shall not be included on a shortlist unless they are expected to fully satisfy the procuring entity's requirements, including those related to eligibility, qualifications, capacity, resources and experience.
- (4) Procuring entities shall obtain a list of suppliers from a shortlist prepared in accordance with guidelines issued by the Agency or from the shortlist available on the Agency's website.

#### **112. Receipt of Quotations**

- (1) The procuring entity shall require tenderers to submit written quotations.
- (2) The tendering period shall start on the date of issue of the request for quotations document to shortlisted tenderers and shall finish on the date of the tender submission deadline.
- (3) The minimum tendering period shall be-
  - (a) 7 days where shortlisted tenderers are national only; or,
  - (b) 14 days where the shortlist includes foreign tenderers.
- (4) The Request for Quotations document shall specify the location, date and time for submission of quotations and any quotation received after the deadline for submission shall be rejected.

- (5) All quotations shall be kept securely until after the deadline for submission of quotations.
- (6) Where quotations are received in an unsealed form, prior to the submission deadline, the contents of the quotation shall be kept confidential and shall not be revealed to any person, other than the officer responsible for receiving the quotation.
- (7) Electronic quotations shall be permitted only in instances where a secure portal is used to receive such quotations and such portal shall be maintained by the Agency or through a secure email address or internet site dedicated to the bid process.
- (8) Submissions by fax are not permissible as dedicated and secure fax lines are not practical.

**113. Evaluation**

- (1) The procuring entity shall evaluate the quotations received.
- (2) The evaluation of quotations shall be conducted in accordance with the rules and procedures in Part 10, except that the determination of the evaluated price of quotations shall not include the application of any additional evaluation criteria as prescribed in paragraph 78.
- (3) The quotation with the lowest evaluated price, which is substantially responsive to the requirements of the procuring entity, shall be recommended for award of contract.

**114. Negotiations**

- (1) Negotiations shall not be permitted under the request for quotations method.

**PART 11**

**PROCEDURES FOR SINGLE SOURCE PROCUREMENT**

**SECTION A – Single Source Procurement from a Sole Source**

**115. Single source procurement for goods or services**

- (1) Subject to approval by the tender board, a procuring entity may engage in a single-source procurement in accordance with sub-paragraph (3) under the following circumstances:
  - (a) the goods or services are available only from a particular tenderer who has exclusive rights in respect of the goods or services, and no reasonable alternative or substitute exists (sole-sourcing); or
  - (b) there is an urgent need for the goods or services, and engaging in tendering proceedings or any other method of procurement would therefore, be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part; or
  - (c) a procuring entity, having procured goods, equipment, technology, services or spare parts from a supplier, following national or international competitive tendering satisfactory to these procedures, determines that additional supplies of the same type as those purchased under an existing contract are required; or
  - (d) a procuring entity seeks to enter into a contract with a tenderer for the purpose of research, experiment, study or development, except where the contract

- includes the product of goods in quantities to establish their commercial viability or to recover research and development costs; or
- (e) procurement involving national defence or national security and where it is determined that a single - source procurement is the most appropriate method of procurement; or
  - (f) where critical items need to be purchased from a specified supplier to ensure that the output of a process plant shall be guaranteed by the contractor responsible for the process design; or
  - (g) where standardization of equipment is essential for economic and technical reasons and it has been proved to the tender board's satisfaction that compatibility of the existing equipment with another make of equipment cannot be established and that there is no advantage in having an alternative supplier; or
  - (h) where standardization of spare parts is required so that they may be compatible with existing equipment or spare parts or stock items related to specific and specialized equipment or machinery; or
  - (i) where an on-going project, additional items need to be purchased for the completion of implementation.
- (2) For purposes of these procedures, standardization is considered to be appropriate if the original equipment is suitable for the purposes of the project being financed and have been acquired at reasonable prices through national or international competitive tendering satisfactory to the tender board and that the number of the new items to be added is less than the existing value and cannot be obtained from other sources.
- (3) In the circumstances prescribed under sub-paragraph (1), a procuring entity may procure the goods or services, by soliciting proposal or price quotation from a single supplier.

**116. Procedure for single source**

- (1) Subject to approval by the tender board a procuring entity may engage in single-source procurement when procurement from a particular supplier or service provider is necessary and in such a case, the letter of invitation to the selected tenderer shall contain-
- (a) the full name and address of the procuring entity;
  - (b) instructions for submission of a quotation;
  - (c) a full description of the goods or services to be procured, including the required technical or quality characteristics, specifications, designs, plans and drawings, as appropriate;
  - (d) the quantities of any goods, or the desired results of any service to be supplied or provided and the required time and place of delivery, any requirements for minimum performance, warranty and maintenance for such goods or management and reporting requirements of a service provider;
  - (e) whether any alternatives to the required specifications or characteristics of the goods or services, or to other contractual conditions, are to be permitted;
  - (f) the period during which the quotation is to remain valid;
  - (g) the form of contract or Purchase Order, to include all conditions and terms of payment;

- (h) a statement of the currency in which the supplier or service provider will be paid;
  - (i) fees if any, to be charged by the procuring entity for the tender document; and
  - (j) a statement that the procuring entity does not bind itself to accept the quotation.
- (2) The procuring entity shall scrutinize any quotation received and, where necessary, negotiate with the supplier with a view to ensuring that the requirement for the goods or services are complied with, and the price quoted is not excessive and is in line with reasonable expectations.
- (3) The procuring entity shall not make undesirable reductions in the quality of the goods or services in order to achieve cost savings.
- (4) The justification for single source procurement further to paragraph 115 shall be prescribed in the record of procurement proceedings made pursuant to paragraph 25.

**117. Single source procurement for works**

- (1) A procuring entity may obtain a priced quotation from a single contractor, negotiate and enter into a direct contract if-
- (a) there is an urgent need for the works such that there would be insufficient time for a procuring entity to engage in tendering or any other method of procurement, provided that the circumstances giving rise to the urgency could not have been foreseen by the procuring entity and have not been caused by dilatory conduct on its part; or
  - (b) there is only one particular contractor which a procuring entity can reasonably expect to undertake the required works; or
  - (c) there are advantages to a procuring entity in using a particular contractor who has undertaken or is undertaking similar works or who may have already been mobilised with plant, equipment and staff in the vicinity or any other resources as may be appropriate; or
  - (d) works which are under execution are to be extended, and the corresponding contract is awarded following national or international competitive tendering.
- (2) The letter of invitation to the selected contractor shall contain-
- (a) the full name and address of the procuring entity;
  - (b) instructions for submission of a quotation;
  - (c) a full description of the works to be procured, including the required technical or quality characteristics, specifications, designs, plans and drawings;
  - (d) bills of quantities, the location and the required time for their completion;
  - (e) any alternatives to the required specifications or characteristics of the works, or to other contractual conditions, if such alternatives are to be permitted;
  - (f) the period during which the quotation is to remain valid;
  - (g) the form of contract or Purchase Order, to include all conditions and terms of payment;
  - (h) a statement of the currency in which the contractor will be paid;
  - (i) fees if any, to be charged by the procuring entity for the tender document; and
  - (j) a statement that the procuring entity does not bind itself to accept the quotation.



- (3) A procuring entity shall scrutinize any quotation received and, where necessary, negotiate with the contractor with a view to ensuring that the requirement for the works is properly addressed and the price quoted is not excessive and is in line with reasonable expectations.
- (4) A procuring entity shall not make undesirable reductions in the quality and scope of the works in order to achieve cost savings.
- (5) The justification for direct contracting pursuant to sub-paragraph (1) shall be set out in the record of procurement proceedings made in accordance with Paragraph 25.

**118. Single source procurement for consultancy services**

- (1) The use for single-source selection method shall be examined in the context of the overall interests of a procuring entity and the project, and a tender board's responsibility to ensure economy and efficiency and provide opportunity to all consultants to the extent possible.
- (2) Single-source selection may be appropriate only if it presents a clear advantage over competition in which case single source selection may be justified-
  - (a) for tasks that represent a natural continuation of previous work carried out by the firm; or
  - (b) where a rapid selection is essential such as in an emergency operation; or
  - (c) where only one firm is qualified or has experience of exceptional worth for the assignment.
- (3) When continuity for downstream work is essential, the initial request for proposals shall outline this prospect and, if practical, the factors used for the selection of the consultant shall take into account the likelihood of continuity for downstream work.
- (4) Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition subject to satisfactory performance in the initial assignment and for such downstream assignments, the procuring entity shall request the initially selected consultant to prepare technical and financial proposals on the basis of terms of reference furnished by the procuring entity which shall then be negotiated.
- (5) If the initial assignment is not awarded on a competitive basis or is awarded under tied financing or reserved selection or, if the downstream assignment is substantially larger in value, a competitive process acceptable to the tender board shall normally be followed, in which case, the consultant carrying out the initial work is not excluded from consideration if he expresses interest and the tender board shall consider exceptions to this rule only under special circumstances and only when a new competitive process is not practicable.

**119. Selection methods, procedures and conditions for application**

- (1) The selection method, procedure and evaluation criteria to be adopted, for all complex assignments, shall be determined by the procuring entity in consultation with the relevant regulatory body prior to the invitation of consultants to submit proposals.
- (2) The criteria referred to in sub-paragraph (1), shall be considered by the tender board which will verify their suitability and make possible comments concerning them, and be included in the request for proposals.

- (3) The following principal selection methods shall be applied according to the characteristics of the services required:
  - (a) selection based solely on technical quality;
  - (b) selection based on technical quality with price consideration;
  - (c) selection based on the compatibility of technical proposal and least cost consideration; and
  - (d) selection based on quality and fixed budget.
- (4) The adoption of any of the four principal selection methods shall depend on the complexity of the assignment, the impact of the assignment on the resulting end product and the probability that the proposals will lead to comparable outputs.
- (5) The Agency shall issue guidelines on selection methods.

**120. Selection based solely on technical quality**

- (1) In the selection procedure based solely on technical quality, the firm which has submitted the best technically acceptable proposal shall be the first to be invited for negotiations in accordance with paragraph 109.
- (2) The envelope containing the financial proposal shall be opened in the firm's presence and its contents examined and where no agreement is reached, then the consultant whose technical proposal is ranked the second shall be invited for negotiations.
- (3) The exercise may continue until an agreement is reached with one of the firms whose technical proposal is considered satisfactory and retained.
- (4) The financial envelopes containing the proposals of firms not invited for negotiations will be returned unopened to the firms.
- (5) Quality based selection is appropriate for the following types of assignments:
  - (a) complex or highly specialized assignments for which it is difficult to define precise terms of reference and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals;
  - (b) assignments that have a high downstream impact and in which the objective is to have the best experts such as feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies;
  - (c) assignments that can be carried out in substantially different ways, such as management advice and sector and policy studies in which the value of the services depends on the quality of the analysis; and
  - (d) architectural services.
- (6) Subject to sub-paragraph (5)(d), novel and complex architectural services may be obtained through architectural competition in accordance with architectural procedures prescribed by the relevant professional regulatory body subject to the approval by the Authority.
- (7) A firm is eligible to participate in architectural competition pursuant to sub-paragraph (6) if it is registered or capable of being registered with the relevant professional body.
- (8) In quality based selection, the request for proposals may request submission of a technical proposal only or request for submission of both technical and financial

proposals at the same time, but in separate envelopes and the request for proposals shall not provide the estimated budget.

- (9) If technical proposals alone were invited, after evaluating the technical proposals, the procuring entity shall ask the consultant with the highest ranked technical proposal entity and the consultant shall then negotiate the financial proposal and the contract.
- (10) If consultants were requested to provide financial proposals initially together with the technical proposals, safeguards shall be built in to ensure that the price envelope of only the selected proposal is opened and the rest returned unopened, after the negotiations are successfully concluded.

**121. Selection based on combined technical quality and price consideration**

- (1) The selection procedure based on the technical quality with price consideration shall start with the evaluation of technical proposals.
- (2) The technical proposals considered satisfactory and classified by order of merit shall have the corresponding financial proposals opened.
- (3) After the necessary correction of arithmetic errors are made, a score of one-hundred percent shall be given to the lowest financial proposal and the score given to each of the other financial proposals is proportionately reduced.
- (4) The technical and financial proposals shall be weighted as specified in the request for proposal and the combined value of the two proposals shall be calculated for each firm.
- (5) Negotiations shall be initiated with the firm which has the highest combined score and shall be conducted in accordance with paragraph 109, until an agreement is reached with one of the firms whose technical proposals are considered satisfactory and retained.

**122. Selection based on compatibility of technical proposals and least cost consideration**

- (1) The selection based on compatibility of technical proposals and least cost consideration may be used in the selection of consultants for assignments of a standard or routine nature where well established practices and standards exist, and in which the contract amount is small.
- (2) The procedure starts with the evaluation of the technical proposal and firms whose technical proposals are retained shall be those who scored equal or above the minimum specified threshold.
- (3) At the stage of examination of financial proposals, only the envelopes containing the financial proposals of consultants who scored equal or above the minimum specified threshold shall be opened.
- (4) The necessary arithmetic corrections will then be made for the purposes of comparison and the consultant whose financial offer is considered the lowest shall be invited for negotiations in accordance with paragraph 109.
- (5) Where an agreement is not reached, the consultant whose financial offer is ranked second lowest, shall in turn be invited to negotiate and so on until an agreement is reached with one of the best ranked consultants.

**123. Selection based on quality and fixed budget**

- (1) The selection based on quality and fixed budget method may be used when the assignment is simple and can be precisely defined and when the budget is fixed.
- (2) The request for proposals shall indicate the available budget and request the consultants to provide their technical and financial proposals in separate envelopes, within the budget.
- (3) Terms of reference shall be prepared to make sure that the budget is sufficient for the consultants to perform the expected tasks.
- (4) Evaluation of all technical proposals shall be carried out first and the price envelopes of those scoring above the minimum threshold shall be opened in public.
- (5) Proposals that exceed the indicated budget shall be rejected.
- (6) The consultant who has submitted the highest ranked technical proposal among the rest shall be selected and invited to negotiate a contract in accordance with paragraph 109.

**124. Selection based on consultants qualification**

- (1) The selection based on consultants qualification may be used for very simple assignments for which the need for preparing and evaluating competitive proposals is not justified.
- (2) In selection based on consultants qualification, the procuring entity shall-
  - (a) prepare the terms of reference;
  - (b) request expressions of interest and information on the consultants' experience and competence relevant to the assignment;
  - (c) establish a short list; and
  - (d) select the firm with the most appropriate qualifications and references.
- (3) The selected firm shall be requested to submit a combined technical and financial proposal and then be invited to negotiate the contract.

**125. Selection of public bodies, agencies as consultants**

- (1) Consulting firms which are partially or totally controlled or sponsored by the government or public authorities may be eligible for public financed projects if:
  - (a) their qualification and experience are suitable for the assignment in question;
  - (b) their structure and legal status are such that they can enter into a legally binding agreement with the public authorities' project implementation agency; and
  - (c) privileges as well as other advantages such as tax exemptions and other facilities and special payment provisions are evaluated and neutralized in the cost comparison to ensure fair competition.

**SECTION B – Single Source Procurement for Emergency Needs**

**126. Procurement for Emergency Needs**

- (1) Where the procuring entity conducts single source procurement on the grounds that there is insufficient time for any other method in an emergency situation, in accordance with paragraph 115, the procuring entity shall –

- (a) first confirm that the goods, works or services required are not available from stores or under any existing framework contract or similar arrangement;
- (b) notify the approvals authority in accordance with paragraph 134;
- (c) identify a suitable tenderer;
- (d) where time permits, prepare a written request for a tender, containing a statement of requirements for the goods, works or services required and a statement of the proposed contract form and terms and conditions of contract;
- (e) issue a written request to the selected supplier and obtain a written tender;
- (f) evaluate the tender in accordance with paragraph 132;
- (g) negotiate with the tenderer, if required, in accordance with the procedure in paragraph 133; and
- (h) prepare a brief report for submission to the approvals authority, which shall contain -
  - (i) details of the requirement and the emergency circumstances;
  - (j) a summary of the action taken to invite, evaluate and negotiate the tender; and
  - (k) a recommendation to award the contract or take other appropriate action.

**127. Procedures for conducting Emergency Procurement**

- (1) Subject to the provisions of the Act, where public interest demands the emergency procurement of any goods, services or works, the controlling officer shall-
  - (a) evaluate the need for the emergency procurement and decide the preferred procurement method in order to guarantee economy and efficiency;
  - (b) ensure the criteria prescribed under section 6 and 42 of the Act are complied with;
  - (c) identify, specify and prioritize the immediate procurement activities which may be used in the period of the emergency;
  - (d) where possible, identify other government bodies that can provide immediate assistance; and
  - (e) specify the time frame within which the emergency procurement will be undertaken.
- (2) Upon satisfying the requirements under sub-paragraph (1), the controlling officer shall submit such information to the Agency for approval pursuant to section 6 of the Act.
- (3) After receiving an application from the controlling officer pursuant to sub-paragraph (2), the Agency shall consider the merits of the application and grant approval within five working days.
- (4) Once the approval is obtained, the controlling officer shall proceed to procure the goods, works or services in accordance with the method of procurement selected and pursuant to section 45 of the Act.
- (5) In a situation where an application for approval for emergency procurement is impracticable, the controlling officer may proceed with the emergency procurement in accordance with the chosen procurement method and shall immediately notify the Agency.
- (6) Subject to sub-paragraph (5), the controlling officer shall submit an application to the Technical Secretariat for retrospective approval within seven working days from the date of award.

- (7) In the application referred to in sub-paragraph (6), the controlling officer shall state the circumstances which precluded him from complying with sub-paragraph (2) of this paragraph.
- (8) Upon receipt of an application for the retrospective approval, the Technical Secretariat shall seek for the advice of the Agency.
- (9) Subject to sub-paragraph (8), the Authority shall, in collaboration with the Government Assets Management Department and the department responsible for technical audit of the Ministry responsible for finance or, where necessary, with any other competent body, advise the Technical Secretariat on the appropriate action to be taken.
- (10) Where the Technical Secretariat acts upon the advice given under sub-paragraph (9), it shall not be held liable for its actions.

**128. Report on Emergency Procurement**

- (1) The controlling officer shall, within fourteen days after completion of the procurement process, prepare and submit a report on emergency procurement to the Technical Secretariat, the Auditor General, the government Internal Auditor Unit, and the Agency.
- (2) The report under sub-paragraph (1) shall be in the format prescribed in the guidelines issued by the Agency.

**129. Prohibition to Tender Board**

- (1) A tender board shall not grant retrospective approval for emergency procurement.

**130. Application of Emergency Procurement**

- (1) A procuring entity shall not use an emergency procurement method if-
  - (a) goods or services fall under common procurement arrangement; or
  - (b) the specific event was anticipated and planned.
- (2) Notwithstanding sub-paragraph (1), where the procurement is reasonably and justifiably necessary, and is inadvertently not included in the annual procurement plan but is within the authority of the controlling officer to approve reallocation within the procuring entity's budget, the value of such procurement shall not exceed the threshold for use of the request for quotation method prescribed in Schedule 2 to these procedures.

**131. Liability of Controlling Officer**

- (1) Subject to paragraph 127, where it is proved that-
  - (a) the controlling officer has engaged in unnecessary or extravagant procurement; or
  - (b) the procurement was undertaken by lack of foresight or timely action, the controlling officer shall be liable to disciplinary action and shall, in addition to any penalty imposed on him, be ordered to pay the difference between the actual cost of the procurement and what the costs would have been through the appropriate channels.
- (2) An award of a contract made by an controlling officer and not approved retrospectively shall be valid and the controlling officer who approved it shall be responsible for the payment of the price involved.

**132. Evaluation of the Tender**

- (1) The evaluation of the tender shall be conducted by an evaluation committee to determine whether the tender -
  - (a) meets the procuring entity's technical needs and in particular its required delivery or completion schedule;
  - (b) accepts the contractual terms and conditions proposed by the procuring entity or offers other terms and conditions which are acceptable to the procuring entity; and
  - (c) offers value for money, based on prices previously obtained for similar goods, works or services or a breakdown analysis of the costs of each component, taking into account the circumstances and value of the procurement and any additional costs involved in meeting the procuring entity's delivery or completion schedule.
- (2) Based on the evaluation, the evaluation committee shall determine whether negotiations are required with the tenderer.
- (3) The evaluation report and recommendations shall be submitted to the approvals authority, prior to any negotiations or contract award.

**133. Procedure for Negotiations**

- (1) The evaluation committee shall prepare a plan for the negotiations, which shall specify the issues to be negotiated and objectives to be achieved and shall, to the extent possible, quantify the objectives and set maximum and minimum negotiation parameters.
- (2) The negotiations shall be conducted by not less than two staff of the procuring entity and a member of the Technical Secretariat, who shall not commit the procuring entity to any proposed arrangement or agreements, but shall seek the prior authorisation of the approvals authority, prior to confirming any agreement reached.
- (3) Staff conducting the negotiations shall prepare minutes of the negotiations, which shall form part of the record of the procurement and shall obtain the tenderer's written agreement that they are a true and accurate record of the negotiations held.

**134. Approval Arrangements for Emergency Procurement**

- (1) The procuring entity shall notify the approvals authority, as soon as it identifies a procurement requirement which will be subject to single source procurement on the grounds of an emergency need.
- (2) In order to ensure that emergency procurement proceeds promptly, any prior authorisations required from the Tender Board, other than authorisation to award a contract, may be given by the chairperson of the Tender Board, or any other member designated by the chairperson, unless alternative arrangements are agreed by the Tender Board.
- (3) The Tender Board shall be required to meet promptly to consider any contract award recommendation and, where the Tender Board is unable to meet within a reasonable time, the contract award may be authorised by the written approval of a majority of the members, without the Tender Board having met, unless alternative arrangements are agreed by the Tender Board.

**SECTION C – Single Source Procurement for Low Value Items**

**135. Procurement of Low Value Items**

- (1) Where the procuring entity conducts single source procurement on the grounds of low value, in accordance with paragraph 58, the procedure shall be as follows-
  - (a) the procuring entity shall first confirm that the goods, works or services required are not available from stores or under any existing framework contract or similar arrangement;
  - (b) the procuring entity shall identify a suitable tenderer;
  - (c) the procuring entity shall request a quotation, from the identified tenderer, based on the statement of requirements included in the requisition; and
  - (d) if the procuring entity is satisfied that the quotation meets its needs and offers value for money, it shall award a contract and issue a written purchase order or similar document, provided that funds have been committed for the purchase.

**SECTION D – Single Source Procurement from Existing Sources**

**136. Procurement from Existing Sources**

- (1) Where the procuring entity conducts single source procurement from an existing source, in accordance with paragraph 58, the procurement shall be managed-
  - (a) as an amendment to contract in accordance with paragraph 165 where the existing contract is still in force; or,
  - (b) in accordance with paragraph 58 where the existing contract has been completed.

**PART 12**

**PROCEDURE FOR SELECTION OF INDIVIDUAL CONSULTANTS**

**137. Procedure for Selection of Individual Consultants**

- (1) Notwithstanding the procedures prescribed in Part 9 for request for proposals procedures for procurement of consultants' services, the selection of individual consultants shall be conducted in accordance with provisions of this Part 12 and other general applicable provisions under these procedures.
- (2) The procuring entity shall publish a notice seeking expressions of interest to develop a shortlist, in accordance with applicable provisions of paragraph 68. However, in circumstances such as assignments of small duration and value for which the time and process of considering a large number of applications may be disproportionate to the nature of the assignment, the approvals authority may waive the requirement of publication of notice, provided that the value of the contract does not exceed the threshold specified under schedule 2 hereof.
- (3) The consultants shall be required to submit proposals and individual consultants shall be selected on the basis of their qualifications for the assignment.
- (4) Consultants shall be selected through comparison of qualifications of at least three shortlisted candidates among those who have expressed interest in the assignment or who have been included in any other shortlists developed in terms of paragraph 88.



- (5) Individuals considered for comparison of qualifications shall meet the minimum relevant qualifications and the best qualified candidate who is fully capable of carrying out the assignment, shall be selected for the assignment. Such minimum qualification shall be specified in the notice seeking expressions of interest. Capability shall be judged on the basis of academic background, experience, and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and government organization. Wherever possible, the procuring entity shall conduct an interview to judge the suitability and ascertain the availability of the consultant.
- (6) Individual consultants may be selected on a single source basis with due justification, in accordance with applicable provisions of Part 11 of these procedures, in exceptional cases such as:
  - (a) tasks that are a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively;
  - (b) assignments with total expected duration of less than three months;
  - (c) emergency situations resulting from natural disasters; and
  - (d) when the individual is the only consultant qualified for the assignment.

## **PART 13**

### **PROCEDURES FOR TWO-STAGE TENDERING**

#### **138. First Stage**

- (1) Tenders shall be invited -
  - (a) through the publication of a tender notice in accordance with paragraph 65 in the case of open tendering, where no pre-qualification has been conducted;
  - (b) from the list of pre-qualified applicants in the case of open tendering, where a pre-qualification has been conducted in accordance with paragraphs 63 and 64; and
  - (c) from a shortlist of tenderers in accordance with paragraph 66 in the case of limited tendering.
- (2) The invitation documents shall call upon tenderers to present, in the first stage of two-stage-tendering proceedings, initial tenders containing their proposals without a tender price.
- (3) The invitation documents may solicit proposals relating to the technical, quality or performance characteristics of the subject matter of the procurement, contractual terms and conditions of supply and, where relevant, the professional and technical competence and qualifications of the tenderers.
- (4) A procuring entity may, in the first stage, engage in discussions with tenderers whose initial tenders have not been rejected pursuant to the provisions of these procedures concerning any aspect of their initial tenders.
- (5) Without prejudice to sub-paragraph (4), when a procuring entity engages in discussions with any tenderers, it shall extend an equal opportunity to participate in discussions to all tenderers.

**139. Second Stage**

- (1) In the second stage of two-stage-tendering proceedings, a procuring entity shall invite all tenderers whose initial tenders were not rejected in the first stage to present final tenders with prices in response to a revised set of terms and conditions of the procurement;
- (2) In revising the relevant terms and conditions of the procurement, the procuring entity shall not modify the subject matter of the procurement but may refine aspects of the description of the subject matter of the procurement by-
  - (a) deleting or modifying any aspect of the technical, quality or performance characteristics of the subject matter of the procurement initially provided and adding any new characteristics that conform to the requirements of these procedures; or
  - (b) deleting or modifying any criterion for examining or evaluating tenders initially provided and adding any new criterion that conforms to the requirements of these procedures, only to the extent that the deletion, modification or addition is required as a result of changes made in the technical, quality or performance characteristics of the subject matter of the procurement.
- (3) Any deletion, modification or addition made pursuant to sub-paragraph (2) shall be communicated to tenderers in the invitation to present final tenders.
- (4) A tenderer who does not wish to present a final tender may withdraw from the tendering proceedings without forfeiting any tender security that the tenderer may have been required to provide.
- (5) The final tenders shall be evaluated with a view to ascertaining the successful tender.

**PART 14**

**CONTRACT AWARD PROCEDURES**

**SECTION A – Contract Award**

**140. Contract Award Decisions**

- (1) All contract award decisions shall be taken by the appropriate approvals authority, in accordance with the levels of authority specified in paragraph 18. The appropriate approvals authority shall be determined by the actual value of the recommended contract and not the estimated value prepared during the procurement planning process.
- (2) All contract award decisions shall be taken in response to a recommendation for contract award, contained in an evaluation report or report of negotiations, unless otherwise permitted by these procedures.
- (3) Following the contract award decision by the approvals authority, the procuring entity shall commit the required funds, before proceeding to award the contract.

**141. Notice of Proposed Contract Award**

- (1) Following the contract award decision by the approvals authority, the procuring entity shall prepare a notice of the proposed award, if the contract value is above the threshold prescribed by these procedures and guidelines issued by the Agency in this regard.

- (2) The notice shall specify-
  - (a) the name and address of the tenderer recommended for contract award;
  - (b) the value of the proposed contract;
  - (c) any evaluation scores; and
  - (d) that the tenderers have a right to review in terms of the provisions of the Act.
- (2) The notice shall be-
  - (a) sent directly to all tenderers who submitted tenders by letter and, where appropriate, by fax or email; and
  - (b) published on the Agency's website.
- (3) The notice shall clearly state that it does not constitute the award of a contract.
- (4) A procuring entity shall allow a period of at least ten working days to elapse from the date of despatch and publication of the notice in accordance with sub-paragraph (3) before a contract is awarded.

**142. Contract Award under Tendering and Request for Proposals Methods**

- (1) Following:
  - (a) the commitment of funds in accordance with paragraph 140;
  - (b) publication of any required notice of proposed contract award in accordance with paragraph 141; and
  - (c) confirmation that the procurement requirement is not subject to a prohibition on contract award in accordance with section 54 of the Act;the procuring entity shall award the contract by issuing a letter of tender acceptance in accordance with the contract award decision.
- (2) The letter of tender acceptance shall state -
  - (d) the name and address of the procuring entity;
  - (e) the name and address of the tenderer;
  - (f) the date and reference number of the tender being accepted;
  - (g) any modifications to the tender, resulting from clarifications or corrections;
  - (h) any items excluded from the contract or variations in quantity or any other detail;
  - (i) the total contract price;
  - (j) that the letter of tender acceptance constitutes a contract between the procuring entity and the tenderer, until such time as a formal contract is signed; and
  - (k) that the tenderer shall sign the contract and provide any required performance security within a maximum of 14 days of the receipt of the letter of tender acceptance by the tenderer.
- (3) The procuring entity shall obtain a signed acknowledgement from the tenderer, confirming that it has received the letter of tender acceptance.
- (4) If the recommended tenderer fails to conclude a contract, or provide a performance security or any other action required by the invitation document, the procuring entity shall annul the contract award and award a contract to the next ranked tenderer, subject to the tenderer being qualified and the prior authorisation of the approvals authority.

**143. Performance Securities**

- (1) A procuring entity shall request a performance security for all contracts for goods, works and non-consulting services with a value greater than the threshold for use of limited tendering specified in Schedule 2 hereof, to secure the supplier's obligation to fulfil the contract.
- (2) The invitation documents and contract shall state the requirements for a performance security, including form and wording and the conditions for forfeiture of the security. A performance security may cover warranty obligations, if so stated in the contract.
- (3) Notwithstanding the provisions of sub-paragraph (1), performance securities shall not be required for framework contracts.
- (4) The value of any required performance security may be expressed either as a fixed amount or as a percentage of the contract value. The amount shall be between five and ten percent of the contract value.
- (5) In determining the amount of performance security required, the procuring entity shall take into account the cost to the supplier of obtaining a performance security, the value of the contract, the risk of a supplier failing to fulfil his contractual obligations and the extent of protection offered to the procuring entity through alternative means, such as payment retentions.
- (6) Where appropriate, the value of the performance security may be progressively reduced, in line with the supplier's progress in delivering or completing the goods, works or services to which the security relates.
- (7) The performance security shall be kept by the procuring entity until the final completion of the contract and shall be released after issuance of the certificate of acceptance of the final report or certificate of completion of works or services if there is no claim filed against the tenderer, contract guarantor or the surety company.
- (8) The successful tenderer shall be required to provide any Performance Security within time stipulated in paragraph 143.
- (9) Any guarantee provided in the form of cash in terms of these procedures shall be deposited into a trust account held by the Agency and such cash guarantee shall not attract any interest for the tenderer, but any interest accrued shall be deemed as an administrative fee to the Agency as prescribed in Schedule 3 of these procedures.

**144. Contract Signature under Tendering and Request for Proposals Methods**

- (1) Following the issue of the letter of tender acceptance in accordance with paragraph 142, the procuring entity shall prepare a written contract, using the contract included in the invitation document.
- (2) The procuring entity shall obtain prior authorisation of the contract document from the controlling officer, before sending it to the supplier for signature. A copy of the contract issued shall be provided to the Tender Board.
- (3) The procuring entity shall ensure that the supplier signs and returns a copy of the contract within 14 days from receipt of the contract draft.

**145. Contract Award and Signature under Request for Quotations**

- (1) Where procurement is conducted using request for quotations, following the contract award decision by the approvals authority and the commitment of funds, the procuring entity shall prepare a written Notice of Award and send it to the successful tenderer.

- (2) The Notice of Award shall not contain any terms, conditions or requirements which differ from the tenderer's quotation, unless these have been agreed in writing with the tenderer.
- (3) The Notice of Award shall constitute a contract between the procuring entity and the tenderer.
- (4) The procuring entity shall require the supplier to provide written confirmation that it has received the Notice of Award and is proceeding with performance of the contract, but any failure by the supplier to provide such confirmation shall not invalidate the contract.

**146. Effectiveness of Contract**

- (1) Contract effectiveness shall be as specified in the contract, but may be dependent upon the fulfilment of one or more conditions, which may include, but are not limited to-
  - (a) receipt by the procuring entity of a Performance Security;
  - (b) receipt by the procuring entity of an advance payment guarantee;
  - (c) receipt by the supplier of an advance payment; or,
  - (d) receipt by the supplier of an acceptable Letter of Credit.
- (2) The procuring entity shall ensure that it promptly fulfils all its obligations relating to contract effectiveness.
- (3) Where a supplier-
  - (e) fails or refuses to sign a written contract without due cause; or,
  - (f) fails to provide the required Performance Security within the time specified; or,
  - (g) fails to fulfil any other condition of contract effectiveness,the procuring entity shall annul the contract award and proceed to award the contract to the next ranked tenderer.

**147. Rejection of Tenders and Debriefing Unsuccessful Tenderers**

- (4) Upon the entry into force of the contract and, the provision by the supplier of any required performance security, the procuring entity shall promptly reject the tenders of unsuccessful tenderers.
- (5) When rejecting unsuccessful tenders, the procuring entity shall return any tender securities and any unopened financial proposals.
- (6) The procuring entity shall, where so requested in writing, provide unsuccessful tenderers with a debrief as to the reasons for the failure of their tenders or applications to pre-qualify.
- (7) The debrief shall be provided within 7 days from a request for such information. Where such debrief is provided verbally, it shall be confirmed in writing to the tenderer.
- (8) The debrief shall state at which stage of the evaluation the tender was rejected, provide brief details of any material deviation, reservation of omission leading to rejection of the tender or state any relative weakness of a tender that was substantially responsive, but failed to offer the lowest evaluated price or highest score, as required.
- (9) The debrief shall not provide details on any other tenders, other than information that is publicly available from tender openings or published notices.

**148. Notices of Contract Award**

- (10) If the contract value is above the threshold prescribed for requests for quotations Schedule 2 to these procedures and guidelines issued by the Agency in this regard, the procuring entity shall publish a notice of contract award.
- (11) The notice of contract award shall indicate the name and address of the supplier, a brief description of the goods, works or services purchased and the contract price.
- (12) The notice shall be published in accordance with paragraph 33.

**SECTION B – Types of Contract**

**149. Types of Contract and Pricing Approaches**

- (1) A procuring entity may use any of the contract types and pricing approaches in accordance with the provisions of this Section B or any other contract types authorised by the Agency under sections 6, 10(b)(iii) and 66 of the Act.
- (2) Procuring entities shall use the contract forms included in the standard bidding documents issued by the Agency in terms of Paragraph 31.

**150. Lump Sum Contracts**

- (1) A procuring entity may use a lump sum contract for goods, works or services, where the content, duration and outputs of the contract are well defined.
- (2) A lump sum contract shall consist of an agreed total price for the performance of the contract. The procuring entity shall, subject to the conditions of the contract, pay the contractor the agreed lump sum price, irrespective of the actual quantity, time or work required for performance of the contract.
- (3) Payments under a lump sum contract shall be dependent on clearly specified outputs, deliverables or events, which may include, but not be limited to-
  - (a) deliveries of goods, as evidenced by the appropriate delivery documentation specified in the contract;
  - (b) installation or commissioning of goods;
  - (c) milestones in construction;
  - (d) provisional or final acceptance of goods or works;
  - (e) reports or recommendations;
  - (f) the completion of drawings, bills of quantities, activity schedules or tender documents;
  - (g) software programmes; or
  - (h) workshops or training programmes.

**151. Unit Price Contracts**

- (1) A procuring entity may use a unit price contract for-
  - (a) services, where the scope and duration of the contract are difficult to define; or
  - (b) works, which are not well defined, likely to change in quantity or specification or where difficult or unforeseen site conditions are likely.
- (2) Payments under a unit price contract shall be for the actual quantity delivered or performed, using fixed unit prices for different items specified in the contract.
- (3) For services contracts, payment shall be based on-

- (a) agreed fee rates for a specified period of time, for either nominated personnel or a certain type or grade of personnel; and
  - (b) reimbursable items, such as transportation and subsistence, using either actual expenses or agreed unit prices.
- (4) For works contracts, payment shall be based on agreed rates for various items of work, as priced by the contractor in the bill of quantities.
- (5) Unit price contracts shall include a maximum amount of total payments, which may include a contingency amount for unforeseen work. The procuring entity shall not exceed the maximum amount, without obtaining approval for a contract amendment.
- (6) The performance under the unit price contracts shall be monitored closely, to ensure that progress is in accordance with the contract and that payments claimed by the contractor are appropriate and in accordance with the contract.

**152. Framework Contracts**

- (1) A procuring entity may use a framework contract for goods, works or services-
- (a) where the items are needed “on call”, but where the quantity and timing of the requirements cannot be defined in advance; or
  - (b) to reduce procurement costs or lead times for items which are needed repeatedly or continuously over a period of time.
- (2) Payments under a framework contract shall be for the actual quantity delivered or performed during the time period covered by the contract, using the fixed unit prices specified in the contract.
- (3) Framework contracts may include an estimated quantity or value, but shall not commit to purchasing this estimated quantity or value.
- (4) Framework contracts may commit to purchasing a minimum quantity or value or to purchasing all similar requirements from the contractor, where this is necessary or preferable to obtain competitive prices.

**153. Percentage Based Contracts**

- (5) A procuring entity may use a percentage based contract where it is appropriate to relate the fee paid directly to estimated or actual costs or amounts, such as the value of a contract or sale.
- (6) The contract shall clearly define the total cost from which the percentage is to be calculated and the percentage to be paid.
- (7) A percentage based contract may include-
- (a) a fixed target cost or amount;
  - (b) minimum or maximum fees;
  - (c) a sliding scale of fees; and/or
  - (d) incentives fees, related to any savings made through economic design, discounts obtained, cost reductions or similar.

**154. Cost Reimbursable and Target Price Contracts**

- (1) A procuring entity may use a cost reimbursable or target price contract for-
- (a) emergency works, where there is insufficient time to fully calculate the costs involved; or

- (b) high risk works, where it is more economical for the procuring entity to bear the risk of price variations than to pay the contractor to accept the risk, or where a contractor will not accept the risk.
- (2) Payment shall be for-
  - (a) the actual cost of the works, as evidenced by receipts and other appropriate documentation; and
  - (b) a fee or profit, as specified in the contract.
- (3) Where a target price can be agreed, an incentive payment may also be made for any cost savings.

### **SECTION C – Contract Documents**

#### **155. Contract Documents**

- (1) Procuring entities shall use the contract form included in the appropriate standard document issued in accordance with paragraph 31 for drafting individual contract documents.
- (2) The draft contract shall be included in the invitation document issued, where procurement is conducted using tendering or request for proposals methods. In all other cases, where the draft contract is not included, any invitation document shall clearly state the type of contract and key contract terms which will apply.
- (3) The contract document shall include all contract terms and conditions. In particular, the contract document shall include-
  - (a) the general conditions of contract or a statement of the general conditions which apply;
  - (b) the special conditions of contract;
  - (c) a statement that the special conditions of contract prevail over the general conditions and the order of priority of other contract documents;
  - (d) a clear description of the goods, works or services purchased by the contract, including the technical requirements, quantity and delivery or completion schedule, based on the statement of requirements included in the invitation document and the supplier's tender, subject to any modifications agreed;
  - (e) the total contract price and, if applicable, the conditions applicable to varying, adjusting, modifying or recalculating the actual price payable;
  - (f) the payment conditions, including the payment period, schedule, currency and documentation required;
  - (g) any requirement for securities;
  - (h) the procedures agreed for dispute settlement; and
  - (i) other key contract terms as required by the standard documents, including, but not limited to warranties, insurance, subcontracting, inspection and acceptance, contract completion, delays in performance or other non-performance, force majeure and variation, modification and termination of the contract.

#### **156. Price Adjustment**

- (1) For contracts with a duration of more than twelve months, the procuring entity may include a price adjustment provision, where it determines that it is more economical



for the procuring entity to accept the risk of increased costs than to pay an additional cost for the supplier to accept the risk.

- (2) Where a price adjustment provision is included, the contract shall clearly state-
  - (a) the formula for calculating adjustments, which shall separate the total price into components, such as labour, equipment, materials and fuel;
  - (b) price indices for each component specified in the formula;
  - (c) any correction factor to take into account differences in the payment currency and the currencies of the source of the input and price index;
  - (d) the base date for application of the formula;
  - (e) the frequency with which the formula shall be applied; and
  - (f) any minimum variation required to qualify for price adjustment and any other restrictions or conditions.
- (3) The contract may also provide that, when the price adjustment provisions results in an increase exceeding a specified percentage or amount of the contract, the procuring entity may either-
  - (g) terminate the contract; or
  - (h) re-negotiate the contract in order to stay within the budget or otherwise minimise costs for the procuring entity.

**157. Payment Terms**

- (1) The period for payment shall be thirty days from the procuring entity's acceptance of the contractor's invoice, unless this is varied in the special conditions of contract.
- (2) The contract may provide for compensation to be paid to the supplier, where the procuring entity fails to make payment within the period specified in the contract. The contract shall clearly state the rate to be applied, how compensation payments shall be calculated and any other conditions relating to payment of compensation.
- (3) The contract shall clearly state the currency or currencies of payment and, where required, the exchange rates or the source of exchange rates applicable.
- (4) The contract shall clearly specify the payment schedule, which may include advance payments, progress payments and retained payments in accordance with paragraph 158, 161, and 161.

**158. Advance Payments**

- (5) The contract may provide for advance payments to the contractor, where this is necessary to ensure effective implementation of the contract or to obtain competitive prices.
- (6) Advance payments shall be made for costs specified in the contract document such as mobilisation, start up, the purchase of materials or costs related to goods which are specially or custom manufactured for the procuring entity.
- (7) The total amount of an advance payment shall not exceed thirty percent of the total contract price.
- (8) Unless otherwise specified in the contract, any advance payment shall only be made against the provision by the contractor of an advance payment guarantee, covering the full amount of the advance payment.

- (9) The contract shall state that materials, equipment and personnel for which an advance payment is received, shall be used only for performance of that contract. A works contract may require that materials, equipment and personnel for which an advance payment is received, must be committed to the site or sites of the works.
- (10) Where so specified in the contract, advance payments may be recovered from subsequent payments to the contractor, which shall be in accordance with the provisions stipulated in the contract.

**159. Payment Securities**

- (1) Where the contract permits payments to a supplier prior to the delivery or completion of the goods, works or services to which the payment relates, the procuring entity shall require a payment security from the contractor, unless otherwise specified in the contract.
- (2) The value of any payment security shall be equal to the payment to which it relates. Where appropriate, the value of a security may be progressively reduced, in line with the contractor's progress in delivering or completing the goods, works or services to which the payment relates.
- (3) The contract shall state that the payment security must be-
  - (a) in accordance with the format and wording provided in the contract;
  - (b) in a form acceptable to the procuring entity;
  - (c) from an institution acceptable to the procuring entity; and
  - (d) valid for the period prescribed in the contract, which shall normally be at least 28 days beyond the anticipated due date of the payment.
- (4) The conditions for forfeiture of the payment security shall be specified in the contract.
- (5) The payment security shall be released promptly to the contractor upon completion of all the contractor's contractual obligations which are subject to the security or upon expiry of the security.

**160. Progress Payments**

- (1) The contract may provide for progress payments to the contractor.
- (2) Progress payments shall be either-
  - (a) payment of a specified percentage or amount of the contract value following particular events, milestones or submission of deliverables specified in the contract; or
  - (b) payment for the actual quantities of goods, works or services delivered or completed.
- (3) Progress payments shall not exceed the cost or value of the goods, works or services delivered or completed.
- (4) Progress payments shall only be made against interim certificates or other documentation proving delivery or completion of the goods, works or services subject to the progress payment or submission of the deliverables specified.

**161. Retained Payments**

- (1) The contract may provide for a specified percentage or amount of payments to the contractor to be retained.

- (2) The contract shall clearly specify-
  - (a) the percentage or amount to be retained;
  - (b) the period or event at which the retention is to be released, which may include, but not be limited to installation of goods, completion of the contract or expiry of a warranty period; and
  - (c) the documents required to prove completion of the event or period in subparagraph (b).
- (3) Where so specified in the contract, the contractor may substitute a payment security for a retention payment.

**162. Payment Documents**

- (1) The contract document shall require the contractor to submit an original invoice for each payment requested.
- (2) The contract document shall clearly state the documents against which payments shall be made.
- (3) The documents required shall relate to the delivery, progress or performance of the contract for which the payment is due or provide evidence of fulfilment of contract terms and conditions . The documents required may include, but not be limited to-
  - (a) Goods Received Notes, Bills of Lading, Air Waybills or other documentation proving delivery or receipt of goods, in accordance with the terms of the contract;
  - (b) Packing Lists, or other documentation proving the content of any consignments delivered;
  - (c) Inspection Certificates or Reports, or other documentation proving that goods, works or services have passed inspection;
  - (d) Installation, Commissioning, Acceptance or Handover Certificates, or other documentation proving that goods, works or services have been accepted;
  - (e) Insurance Certificates or other documentation proving that the contractor has taken out the required insurance for the goods, works or services;
  - (f) Certificates of Origin or evidence of nationality, where goods supplied or personnel employed under a contract are subject to restrictions on origin or nationality;
  - (g) Interim Certificates, certifying the progress made in performance of a contract, as evidence of entitlement to progress payments; or
  - (h) Receipts or other documentation, proving that specified costs have been incurred, such as air tickets or timesheets for personnel.

**PART 15**

**CONTRACT MANAGEMENT**

**163. Contract Management Responsibilities**

- (1) The procuring entity shall designate a member of staff as the contract manager for every contract awarded. The contract manager shall be responsible for-

- (a) monitoring the performance of the supplier, to ensure that all delivery or performance obligations are met or appropriate action taken by the procuring entity in the event of obligations not being met;
- (b) ensuring that the supplier submits all required documentation;
- (c) ensuring that the procuring entity meets all its payment and other obligations on time and in accordance with the contract;
- (d) ensuring that there is adequate cost, quality and time control, where required;
- (e) preparing any required contract variations or change orders and obtaining all required approvals before their issue;
- (f) preparing any required contract amendments and referring them to the approvals authority for authorisation prior to issue;
- (g) managing any handover or acceptance procedures;
- (h) referring any recommendations for contract termination to the approvals authority prior to issue;
- (i) notifying the approval authority of any disputes with suppliers and seeking their prior approval for the actions taken in managing the dispute;
- (j) ensuring that the contract is complete, prior to closing the contract file; and
- (k) ensuring that all contract management records are kept and archived as required.

**164. Administration of Sub-Contracts**

- (1) Any subcontracting shall be subject to prior written consent of the procuring entity.
- (2) The prime contractor shall be responsible for administering any subcontracts and the procuring entity shall monitor only the prime contractor's management of its subcontracts.
  - (1) The procuring entity shall not directly administer any subcontracts, except where-
    - (a) there is a risk of the procuring entity incurring undue cost or delay; or
    - (b) successful completion of the prime contract is threatened; or
    - (c) special surveillance of high risk or critical subsystems is required.

**165. Contract Amendments**

- (1) Where any change to the terms and conditions of a contract is required, the procuring entity shall prepare a written contract amendment.
- (2) The procuring entity shall obtain the prior authorisation of the approvals authority for any amendment to a contract.
- (3) No amended contract in terms of this Paragraph shall be issued or effected prior to the approval of the Agency.
- (4) The appropriate approvals authority shall be determined by the original or amended value of the contract, whichever is higher, and not by the value of the amendment.
- (5) Any contract amendment shall only be valid when signed by authorised representatives of both the procuring entity and the supplier.
- (6) All contract amendments shall be numbered sequentially by the procuring entity. Any such amendment shall be submitted to the Agency within 10 working days after being authorised by the approvals authority.

**166. Contract Variations**

- (1) Where appropriate, in order to facilitate adaptations to unanticipated events or changes in requirements, the contract may permit-
  - (a) the contract manager, supervising engineer or other designated official to order variations to the description of goods, works or services, the price or the completion date; or
  - (b) defined compensation events to justify variations in the price or completion date.
- (2) Where a variation results in a change in price, any additional funds shall be committed, prior to issue of the variation, unless such funds are already provided by any committed amount for contingencies or similar provisions.
- (3) The contract shall include a maximum limit on the variations which may be issued without a contract amendment in accordance with paragraph 166.
- (4) The contract shall clearly state any approval requirements relating to contract variations.

**167. Contract Termination**

- (1) The contract document shall specify the grounds on which the contract may be terminated and specify the procedures applicable to termination.
- (2) The procuring entity shall obtain the authorisation of the approvals authority which authorised the original contract, prior to terminating the contract. The request for approval shall clearly state-
  - (a) the reasons for termination;
  - (b) actions which have been taken to avoid the need for termination;
  - (c) the contractual grounds for termination; and
  - (d) the costs, if any, for which the procuring entity will be liable following termination.

**PART 16**

**PROCEDURES FOR DISPOSAL OF PUBLIC ASSETS BY TENDER**

**SECTION A – Conditions for Participating in Disposal of Public Assets by Tender**

**168. Qualification of asset buyer**

- (1) For purposes of qualifying to participate in disposal proceedings, an asset buyer shall-
  - (a) have sufficient financial resources to perform the disposal contract;
  - (b) have legal capacity to enter into a disposal contract;
  - (c) not have been convicted of any criminal offence or found to have made false statements or misrepresentations as to his qualification to enter into a disposal contract within a period of five years preceding the commencement of the disposal proceeding, or has not been otherwise disqualified pursuant to administrative suspension or disbarment proceedings;
  - (d) not be insolvent, in receivership, bankruptcy or being wound up, his affairs are not being administered by a court or a judicial officer, his business activities

have not been suspended and is not the subject of legal proceedings for any of the reasons prescribed in this paragraph.

- (2) A procuring entity may require asset buyers participating in disposal proceedings to provide appropriate documentary evidence or other information as the procuring entity considers necessary.
- (3) Any requirement established pursuant to this paragraph shall be prescribed in the invitation documents.
- (4) A procuring entity shall impose no criterion, requirement or procedure with respect to the qualifications of asset buyers other than those provided for in this paragraph.
- (5) The procuring entity shall evaluate the qualifications of asset buyers in accordance with the qualification criteria and procedures prescribed in the invitation documents.
- (6) Subject to paragraph 169 the procuring entity shall establish no criterion, requirement or procedure with respect to the qualifications of asset buyers that discriminates against or among asset buyers on the basis of nationality, or that is not objectively justifiable.

**169. Participation by an Asset Buyer**

- (1) An asset buyer shall be permitted to participate in disposal proceedings without regard to nationality, except in cases in which a procuring entity decides, on grounds specified in these procedures or according to provisions of law, to limit participation in disposal proceedings on the basis of nationality.
- (2) A procuring entity that limits participation on the basis of nationality pursuant to sub-paragraph (1) shall include in the record of the disposal proceedings a statement of the grounds and circumstances on which it relied.
- (3) A procuring entity shall, when first soliciting the participation of buyers in the disposal proceedings, declare to them that they may participate in the disposal proceedings as appropriate regardless of nationality.
- (4) The declaration under sub-paragraph (3) shall not be subsequently altered.
- (5) Where a disposing entity decides to limit participation pursuant to sub-paragraph (1), it shall communicate its decision to the relevant parties.

**170. Disposal Process**

- (1) Any disposal by tender by a procuring entity shall be authorized by the Accountant General or other competent authority.
- (2) The procedure for obtaining approval for disposal of public assets by tender shall be in accordance with the Public Finance Management Act and Regulations made under it.

**171. Disposal Plan**

- (1) Assets to be disposed of shall be grouped in lots in a manner which attracts maximum possible competition.
- (2) Where an asset is to be disposed of by tender, a procuring entity shall maximize the number of assets to be disposed of at a time in order to reduce transaction costs.
- (3) Procuring entities may group assets for purposes of common disposal.

**172. Environmental Issues**

- (1) A disposing entity shall pay due regard to repair and re-use of goods wherever practicable and economically viable before disposing them by tender and procuring new replacements.

**173. Methods of Disposal and their Conditions for Use**

- (1) A procuring entity that intends to commence a competitive disposal by tender process shall provide all eligible prospective asset buyers with timely and adequate notification of the procuring entity's requirements and an equal opportunity to tender for the required assets to be disposed of.
- (2) A procuring entity may use restricted or direct disposal by tender where-
  - (a) the market is limited and few buyers who are willing to pay the reserve price are identified; and/or
  - (b) national security, public interest, legal or human rights issues or environmental considerations are served by selling to a particular company, group or individual.

**174. Competitive Tendering for Disposal of Assets by Tender**

- (1) All disposals of public assets shall be conducted through competitive tendering except for restricted or direct disposals under paragraph 173.

**175. International Competitive Tendering**

- (1) In international competitive tendering a procuring entity shall invite asset buyers, by means of a tender notice that shall be advertised nationally and internationally to submit tenders for the purchase of public assets.

**176. National Competitive Tendering**

- (1) In national competitive tendering, a procuring entity shall invite assets buyers regardless of their nationality, by means of a tender notice advertised only in Swaziland, to submit priced tenders for purchase of public assets.
- (2) The national competitive tendering may be used in cases where-
  - (a) payment may be made wholly in Emalangeni; and/or
  - (b) the estimated value of assets does not exceed the threshold for national competitive tendering prescribed in the Schedule 6 to these procedures.

**177. Tendering Proceedings**

- (1) A procuring entity which intends to commence competitive tendering proceedings shall prepare a tender notice inviting asset buyers to submit priced offers for buying assets to be disposed of and advertise it in the Agency's Website in accordance with the paragraph 33.
- (2) The entity procurement unit shall table to the tender board, the invitation and the disposal by tender documents, for comment and approval.
- (3) Invitations which are issued without prior approval by the tender board shall not be considered as sufficient and adequate to satisfy a tender board's requirements, and consequently the procuring entity will be requested to issue new invitations to tender.

- (4) A tender notice shall be published in sufficient time, to enable prospective buyers to obtain disposal by tender documents, prepare and submit their responses before the deadline for receipt of tenders.
- (5) A procuring entity shall offer a reasonable opportunity to potential buyers of public assets, to inspect an asset before the date or deadline for tendering.
- (6) The time specified for the opening of the tenders shall be the same as the deadline for receipt of tenders or immediately thereafter, and shall be repeated in the invitation document, together with the place for tender opening.
- (7) The invitation of tenders for disposal of public assets shall contain the following information:
  - (a) the name and address of the procuring entity, the description of the asset to be disposed of, the location of the asset and the arrangements for a potential asset buyer to inspect the asset, including a statement that the asset is sold on “as is, where is” basis;
  - (b) the means or conditions of obtaining the invitation documents and the place from which they may be obtained;
  - (c) the price, if any, charged by the procuring entity for the invitation documents;
  - (d) the currency and means of payment for the invitation documents;
  - (e) the language or languages in which the invitation documents are available;
  - (f) the place for the submission of tenders; and
  - (g) the deadline for the submission of tenders as well as the place, hour and date for opening tenders.

**178. Contents of Invitation documents**

- (1) The invitation documents shall contain the following instructions to asset buyers:
  - (a) the criteria and procedures relating to the evaluation of the qualifications of asset buyers and demonstration of qualification;
  - (b) the requirements as to documentary evidence or other information that must be submitted by asset buyers to demonstrate their qualifications;
  - (c) the description of the assets, their locations and conditions for sale, responsibilities for the risk and cost for dismantling and removing the asset;
  - (d) the terms and conditions of the disposal contract, to the extent they are already known to the procuring entity, and the contract form, if any, to be signed by the parties;
  - (e) if asset buyers are permitted to submit tenders for only a portion of the assets to be disposed of, a description of the portion or portions for which tenders may be submitted;
  - (f) the currency or currencies in which the tender price is to be formulated and expressed;
  - (g) the language in which tenders are to be prepared;
  - (h) if an asset buyer may not modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security, a statement to that effect;
  - (i) the manner, place and deadline for the submission of tenders;
  - (j) the period of time during which tenders shall be in effect;



- (k) the place, date and time for the opening of tenders;
- (l) the procedures for opening of tender and criteria for examining and evaluating tenders;
- (m) the currency that will be used for the purpose of evaluating and comparing tenders;
- (n) the means by which asset buyers may seek clarification of the invitation documents, and a statement as to whether the procuring entity intends, at this stage, to convene a meeting of asset buyers;
- (o) any requirements of the procuring entity with respect to the issuer and the nature, form, amount and other principal terms and conditions of any tender security to be provided by asset buyers submitting tenders, and any such requirements for any security for the performance of the procurement contract to be provided by the asset buyers that enters into the disposal contract;
- (p) references to the Act, the Regulations and other written laws and procedures directly pertinent to the disposal proceedings, provided, however, that the omission of any such reference shall not constitute grounds for review under section 46 and 48 of the Act or give rise to liability on the part of the procuring entity;
- (q) the name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from asset buyers in connection with the disposal proceedings, without the intervention of an intermediary;
- (r) notice of the right provided under section 46 and 48 of the Act to seek review of an unlawful act or decision of, or procedure followed by, the procuring entity in relation to the disposal proceedings;
- (s) where the procuring entity reserves the right to reject all tenders pursuant to paragraph 40 a statement to that effect;
- (t) any other requirements established by the procuring entity in conformity with the Act and these procedures relating to the preparation and submission of tenders and to other aspects of the disposal proceedings.

**179. Examination, Evaluation and Comparison of Tenders**

- (1) A controlling officer shall form a tender evaluation committee comprising of not less than three and not more than five members.
- (2) In exceptional circumstances, the controlling officer may form an evaluation committee of more than five members depending on the value and complexity of the disposal if there are justifiable reasons to increase the number of members of the evaluation committee.
- (3) The tender evaluation committee shall evaluate on a common basis opened tenders in order to determine the cost or price to the disposing entity of each tender in a manner that permits a comparison to be made between the tenders on the basis of the evaluated costs or prices.
- (4) The tender evaluation shall be consistent with the terms and conditions set forth in the tender documents and such evaluation shall be carried out using the criteria explicitly stated in the invitation documents.
- (5) Tenders shall be comparable among themselves in order to determine the highest evaluated price for disposal of asset by tender.

- (6) In determining the highest evaluated tender for disposal of asset the preferred evaluation method shall be the evaluation based on price only unless other factors, such as end-user or export restrictions, or a need to attach conditions to a sale are taken into consideration, and stated clearly in the invitation documents.
- (7) Where the highest-priced tender has been submitted by more than one tenderer, a procuring entity shall invite the tenderers who submitted identically priced tenders to submit a revised tender.
- (8) No tenderer, other than those who submitted the identical highest priced tender, shall be permitted to submit a revised tender or participate in the retendering process in any way.
- (9) A revised tender shall only contain a revised price and a tenderer shall not be permitted to change the terms and conditions, technical details, documentation or any other aspects of their original tender, in any way.
- (10) A revised tender shall be written and sealed and submitted in the same way as the original tender.
- (11) A tenderer shall be given a reasonable period of time prior to the deadline for submission of their revised tender.
- (12) Where evaluation is based on price only and it is reasonable to conduct and conclude the evaluation immediately in the presence of a tenderer at a public tender opening, a disposing entity may, if the tenderer agrees, conduct the re-tendering procedure immediately.
- (13) Where the re-tendering procedure is conducted immediately, a tenderer shall be given access to a private location in which to discuss and prepare the revised tender and the tenderer shall be provided with all reasonable assistance, such as writing and sealing materials calculators and access to a telephone.
- (14) The tender opening procedure for the revised tender shall be the same as that for the original tender.
- (15) Evaluation shall be conducted in the same manner as the original evaluation, except that the price contained in the revised tender shall replace the original price.
- (16) Where identical highest priced tenders are received during a retendering process, further re-tendering shall be held in accordance with this paragraph.
- (17) Where it is subsequently discovered that an error was made in the original evaluation, including, an arithmetic error or application of an exchange rate, and that as a result tenderers had not submitted identical highest priced tenderers, the re-tendering procedure shall be declared null and void and the revised tenders shall not be considered.
- (18) Where re-tendering fails, the whole process shall be cancelled and retendered.
- (19) Where the evaluation is based on price only, a contract shall be awarded to the tenderer with the highest price.
- (20) Where written tenders are received, the valuation committee shall-
  - (a) correct any arithmetic errors;
  - (b) convert the tenders to a common currency; and

- (c) compare the tender price with the value of an asset or reserve price, where appropriate.
- (21) Contract award shall be recommended to the best evaluated price, which meets the eligibility requirements and passes the evaluation criteria, subject to any reservations in regard to the valuation or reserve price.
- (22) In evaluating and comparing tenders, a disposing entity may grant a margin of preference for the benefit of asset buyers who are Swazi citizens provided that the margin of preference shall be calculated in accordance with Paragraphs 23 and reflected in the record of the procurement proceedings.
- (23) Where tender prices are expressed in two or more currencies, the tender prices of all tenders shall be converted to the same currency, and according to the rates specified in the invitation documents, for the purpose of evaluating and comparing tenders.
- (24) The rates of exchange to be used in such valuation shall be the selling rates published by the Central Bank of Swaziland and applicable to similar transactions:
  - (a) on a date selected in advance and specified in the tender documents provided that such date should not be earlier than fifteen days prior to the date specified for the opening of tenders nor later than the original date prescribed in the tender documents for expiry of the period of tender validity; or
  - (b) on the date of decision to award the contract or on the original date prescribed in the invitation documents for the expiry of the period of tender validity, whichever is earlier.
- (25) A detailed report on the evaluation and comparison of tenders, setting forth the specific reasons which the determination of the highest evaluated price tender is based, shall be prepared by the evaluation committee.
- (26) The evaluation report shall be submitted to the entity procurement unit to check if it is in accordance with the tender document and if the entity procurement unit is satisfied with the report shall forward the same to the tender board for approval; and where not satisfied it shall return the evaluation report with reasons to the evaluation team for re-evaluation.

**180. Negotiations with the Highest Evaluated Tenderer**

- (1) Negotiations shall only be held with the highest evaluated tenderer for disposal of assets.
- (2) Negotiations shall not be conducted purely for the purpose of increasing prices.
- (3) Negotiations with a tenderer are not permitted until after the tender board has approved the evaluation committee's recommendations of the highest evaluated tenderer and the need to hold negotiations.
- (4) An entity procurement unit shall recommend membership of a negotiation team based on appropriate seniority and experience depending on the value and complexity of the procurement and the membership shall be approved by the controlling officer who shall also name the chairman from amongst the members.
- (5) The number of members of the negotiation team shall depend on the value and complexity of the disposal requirement, but shall in all cases be a minimum of three and maximum of five, and may include members of the original evaluation committee or different officers.

- (6) The negotiation team shall include members with relevant mix of skills and experience, including:
  - (a) knowledge of end-user requirements;
  - (b) negotiation skills;
  - (c) procurement and contracting skills;
  - (d) financial management skills; or
  - (e) technical skills relevant to the subject of the disposal.
- (7) The chairman of the negotiation team shall be responsible for:
  - (a) ensuring all arrangements for negotiation meetings are made;
  - (b) chairing all negotiations;
  - (c) ensuring the negotiations are conducted in accordance with all legal requirements;
  - (d) ensuring all members are aware of their responsibilities, including the need for confidentiality;
  - (e) ensuring all members have a common understanding of the process of negotiations and objectives to be achieved;
  - (f) ensuring members understand their own role in the negotiations and the standard approach of the team;
  - (g) managing communications between the negotiation team and the tenderer or any other body;
  - (h) ensuring that the negotiation team has access to necessary information; and
  - (i) preparing the final report on the negotiation or ensuring that it is prepared.
- (8) The negotiation team shall prepare a negotiations plan which shall specify the issues to be negotiated as specified in the evaluation report and the objectives to be achieved and whenever possible, quantify the objectives and set maximum and minimum negotiating parameters.
- (9) The appropriate tender board shall approve the negotiations plan prior to any negotiations taking place.
- (10) Prior to confirming any agreement reached, the entity procurement unit shall seek approval of the tender board.
- (11) The negotiation team shall produce minutes of the meeting and shall obtain the tenderer's written agreement that it is a true and accurate record of the negotiations held and submit the minutes to the entity procurement unit.
- (12) The entity procurement unit shall submit the recommendations of the negotiation team to the tender board to:
  - (a) proceed with contract award to the recommended tenderer, incorporating the agreements reached during negotiations;
  - (b) revise the negotiation objectives and hold further negotiations, or
  - (c) terminate the negotiation and reject the tenderer.
- (13) Where the negotiation team recommends rejection of the tenderer, it may also, where appropriate, recommend inviting the next ranked tenderer for negotiations.

- (14) The results of any approved negotiations shall be specified in a letter of tender acceptance and incorporated into the contract document.
- (15) Where negotiations are commenced with the next ranked tenderer the procuring entity shall not reopen earlier negotiations; and the original tenderer shall be informed in writing of the reasons for termination of the negotiations.

**181. Acceptance of Tender and Entry into force of disposal contract**

- (1) The tender which is ascertained to be the successful tender shall be accepted and the notice of acceptance of the tender shall be given promptly to the asset buyer submitting the tender after all necessary approvals have been obtained.
- (2) The invitation documents may require the asset buyer whose tender has been accepted to sign a written disposal contract conforming to the tender and in such cases, the procuring entity and the asset buyer shall sign the disposal contract within twenty eight days after the notice of acceptance has been dispatched to the asset buyer.
- (3) The disposal contract made in accordance with 'the terms and conditions' of the accepted tender shall enter into force when the notice referred to in sub- paragraph (1) has been dispatched to the asset buyer that submitted the tender.
- (4) The notice is considered dispatched when it is properly addressed or otherwise directed and transmitted to the asset buyer, or conveyed to an appropriate authority for transmission to the asset buyer, by a mode authorized by paragraph 26.
- (5) Where the asset buyer whose tender is accepted fails to sign a written disposal contract, if required to do so, or fails to provide any required security for the performance of the contract, the procuring entity shall, on the prior written approval of the tender board, select a successful tender from among the remaining tenders that are in force, subject to the right of the procuring entity to reject all remaining tenders.
- (6) Upon the entry into force of the disposal contract and, if required, the provision by the asset buyer of a performance security in respect of the contract, notice of the disposal contract shall be given to unsuccessful asset buyers, specifying the name and address of the asset buyer that has entered into the contract and the contract price.

**182. Process to be Confidential**

- (1) The information relating to the examination, clarification, evaluation and comparison of tenders and recommendations for the award of a contract shall not be disclosed to asset buyers or to any other person not involved officially in the examination, evaluation or comparison of tenders or in the decision on which tender should be accepted.
- (2) Any effort by a tenderer to influence the procuring entity's or approving authority with a view to processing of tenders or award decisions may result in the rejection of his tender.

**183. Record of disposal proceedings**

- (1) A procuring entity shall maintain a record of its disposal proceedings and contract management pursuant to paragraph 25 to these procedures.
- (2) Where a contract is on-going or is challenged, the records shall be kept for one additional year after the completion of the contract or the settlement of the dispute, whichever comes earlier.

- (3) The following records of a disposal proceeding shall be open for inspection by the Agency:
- (a) records of a disposal process;
  - (b) records relating to contracts management; and
  - (c) records of investigations of complaints or any other matter related to the Act or these procedures.
- (4) The records of disposal of a public asset shall contain the following documents, where appropriate:
- (a) a request to initiate disposal proceedings, including a report of a board;
  - (b) a copy of an invitation notice;
  - (c) copies of invitation documents, their amendments or clarifications and any additional information ;
  - (d) a report of inspection of the assets by potential tenderers;
  - (e) a record of the tender openings;
  - (f) a copy of all tenders evaluated, clarifications requested and responses received;
  - (g) the evaluation report;
  - (h) minutes of meetings on the disposal, including negotiation proceedings;
  - (i) a copy of a letter of tender acceptance to a successful tenderer, if any;
  - (j) the contract, if any;
  - (k) all documents related to contracts management, including records of receipts of payment and handing over certificates;
  - (l) a copy of the update to the procuring entity asset register;
  - (m) all correspondence between a disposing entity and a tenderer or a third party disposal agent;
  - (n) a copy of all submissions to the tender board and all decisions related to the disposal, including, the choice of disposal method, approval of invitation documents, approval of an evaluation report, approval of negotiations, contract award decision, approval of contract documents and any decision to suspend or cancel disposal proceedings; and
  - (o) the write-off approval from the Accountant General or other competent authority.

**SCHEDULE 2:  
THRESHOLDS FOR PROCUREMENT METHODS**

[Made under procedure 18 of these Procedures]

|                           |  |  |
|---------------------------|--|--|
| Open Tendering            | Goods<br>Non Consultancy Services<br>Works   | above E200,000<br>above E200,000<br>above E500,000           |
| Limited Tendering         | Goods<br>Non Consultancy Services<br>Works   | below E200,000<br>below E200,000<br>below E500,000           |
| Request for Proposals     | Consultancy Services:<br>- with publication of a notice<br>- without publication of a notice | above E200,000<br>below E200,000                             |
| Request for Quotations    | Goods<br>Non Consultancy Services<br>Works   | below E20,000<br>below E20,000<br>below E50,000              |
| Single Source Procurement | Goods<br>Non Consultancy Services<br>Consultancy Services<br>Works                           | below E2,000<br>below E2,000<br>below E2,000<br>below E5,000 |

- (1) A variation of the above schedule shall be authorised by the Agency where a procuring entity has submitted a written application, which fully justifies such variation, to the Agency.

**SCHEDULE 3:  
FEES FOR SERVICES RENDERED BY THE AGENCY**

[Made under procedure 45 of these Procedures and sections 48(2) and 57(7) of the Act]

|   | Description  | Fee                     |
|---|--|-------------------------|
| <b>A) GENERAL FEES</b>  |  |                         |
| <b>1. Fees charged to a tenderer seeking administrative review</b>                    |  |                         |
| 1.1   | Fee for processing application for administrative review                                     | E1,000.00               |
| <b>2. Fees charged to a tenderer or supplier seeking an appeal against suspension</b> |  |                         |
| 2.1   | Fee for processing appeal against suspension   | E5,000.00               |
| <b>3. Fees for administration of tender, performance, and payment securities</b>      |  |                         |
| 3.1   | Fee for administration of tender, performance, or advance payment security deposited as cash | 100% of interest earned |
| <b>4. Annual administrative levy charged to procuring and requesting entities</b>     |  |                         |
| 4.1   | Procurement Volume up to E500,000  | E3,000.00               |
| 4.2   | Procurement Volume above E500,000 up to E5,000,000   | E5,000.00               |
| 4.3   | Procurement Volume above E5,000,000  | E7,000.00               |
| <b>B) FEES FOR PUBLICATIONS ON THE AGENCY'S WEBSITE</b>                               |  |                         |
| <b>5. Annual Procurement Plan</b>   |  |                         |
| 5.1   | Procurement Volume up to E500,000  | E2,500.00               |
| 5.2   | Procurement Volume above E500,000 up to E5,000,000   | E3,500.00               |
| 5.3   | Procurement Volume above E5,000,000  | E5,000.00               |
| <b>6. Fees for advertising of tenders</b>   |  |                         |
| 6.1   | Advertising of Tenders   | E2,500.00               |
| <b>7. Posting Tender Disclosure Information</b>                                       |  |                         |
| 7.1   | Minor Value Procurement  | E 250.00                |
| 7.2   | Quotations   | E 500.00                |
| 7.3   | Single Source  | E2,500.00               |
| 7.4   | Open Tendering/Selection   | E2,500.00               |
| 7.5   | Short list of Prequalified tenderers/Consultants   | E2,500.00               |
| 7.6   | Shortlist of Suppliers for Framework Contracts   | E50.00                  |



**SCHEDULE 4:  
FEES FOR SERVICES RENDERED BY THE GOVERNMENT  
CENTRAL STORES**

[Made under procedure 19 of these Procedures]

| <b>Description of paying party</b>            | <b>Fee</b>                                 |   |
|---|--|---|
|   | Up to the limit of minor value procurement | Above minor value procurement limit                                 |
| Procuring entity (Third Party procurement )   | E15,000.00                                 | 10% of contract value or E50,000.00 per contract whichever is lower |
| The Agency                                    | Not applicable                             | 10% of contract value or E50,000.00 per contract whichever is lower |
| Suppliers, services providers and contractors | 2% of each call-off order value            |   |
| Suppliers of petroleum products               | 0.1% of each call-off order value          |   |

**SCHEDULE 5:  
ANTI-BRIBERY POLICY/CODE OF CONDUCT AND COMPLIANCE  
PROGRAM**

[Made under procedure 28 of these Procedures]

MEMORANDUM

**Government of the Kingdom of Swaziland  
Procedures for tendering for public sector contracts**

The following procedures will apply to the letting of contracts for the public sector in addition to the standard legal and project requirements. These procedures are administrative requirements; they will form part of the terms and conditions of each contract and will be actionable, in the event of breach, by the Government of the Kingdom of Swaziland and any of the competing tenderers.

- (1) Each tenderer must submit a statement, as part of the tender documents, with the following text.

“This company places importance on competitive tendering taking place on a basis that is free fair, competitive and not open to abuse. It is pleased to confirm that it will not offer or facilitate, directly or indirectly, any improper inducement or reward to any public officer their relatives or business associates, in connection with its tender, or in the subsequent performance of the contract if it is successful.

This company has an Anti-Bribery Policy/Code of Conduct and a Compliance Program which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees as well as by all third parties working with this company on the public sector projects, or contract including agents, consultants, consortium partners, sub-contractors and suppliers. Copies of our Anti-Bribery Policy/Code of Conduct and compliance Program are attached”

(Alternatively: This company has issued, for the purposes of this tender, a Compliance Program copy attached -which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the public sector projects or contract including agents, consultants, consortium partners, subcontractors and suppliers”).

- (2) (a) This statement must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the tendering company and, where relevant, of its subsidiary in the Kingdom of Swaziland. If a tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.

(b) Tenderers will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners, the

tenderer may cover the subcontractors and consortium partners in its own statement, provided the tenderer assumes full responsibility.

- (3)
  - (a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
  - (b) Each tenderer will make full disclosure in the tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the tender and, if successful, the implementation of the contract.
  - (c) The successful tenderer will also make full disclosure [quarterly or semi-annually] of all payments to agents and other third parties during the execution of the contract.
  - (d) Within six months of the completion of the performance of the contract, the successful tenderer will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and services provided that are sufficient to establish the legitimacy of the payments made.
  - (e) Statements required according to sub-paragraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.
- (4) Tenders which do not conform to these requirements shall not be considered.
- (5) If the successful tenderer fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
  - i) Cancellation of the contract;
  - ii) Liability for damages to the public authority and/or the unsuccessful competitors in the tendering possibly in the form of a lump sum representing a pre-set percentage of the contract value (liquidated damages), unsuccessful tenderer would present their claims under international arbitration;
  - iii) Forfeiture of the tender security, and
  - iv) Suspension in accordance with section 55 of the Act.
- (6) Tenderers shall make available, as part of their tender, copies of their Anti-Bribery Policy/Code of Conduct, if any, and of their general or project-specific Compliance Program.

The Government of the Kingdom of Swaziland has made special arrangements for adequate oversight of the procurement process and the execution of the contract, and has invited civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have full access to all documentation submitted by tenderers for this contract, and to which in turn all tenderers and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information concerning a tenderer may be disclosed to another tenderer or to the public).

**SCHEDULE 6:  
METHODS OF SELECTION AND LIMIT OF APPLICATION FOR  
DISPOSAL BY TENDERING**

[Made under procedure 176 of these Procedures]

| <b>Method of Disposal Limits</b>    | <b>Limits</b> |
|-------------------------------------|---------------|
| International Competitive Tendering | No Limit      |
| National Competitive Tendering      | E15,000,000   |

**SCHEDULE 7:  
TENDER SECURING DECLARATION FORM**

[Made under procedure 70 of these Procedures]

**1. Bid-Securing Declaration**

Date: [*insert date (as day, month and year)*]

Bid No.: [*insert reference number of bidding process*]

Alternative No.: [*insert identification No if this is a Bid for an alternative*]

To: [*insert complete name of Procuring Entity*]

We, the undersigned, declare that:

We understand that, according to your conditions, bids must be supported by a Bid Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Purchaser for the period of time of [*insert number of months or years*] starting on [*insert date*], if we are in breach of our obligation(s) under the bid conditions, because we:

- a) have withdrawn our Bid during the period of bid validity specified in the Form of Bid; or
- b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the invitation document.

We understand this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Signed: [*insert signature of person whose name and capacity are shown*] In the capacity of [*insert legal capacity of person signing the Bid Securing Declaration*]

Name: [*insert complete name of person signing the Bid Securing Declaration*]

Duly authorized to sign the bid for and on behalf of: [*insert complete name of Bidder*]

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ [insert date of signing]

Corporate Seal (where appropriate)

## 2. Bid Security (Bank Guarantee)

*[If required, the **Bank/Bidder** shall fill in this Bank Guarantee form in accordance with the instructions indicated in brackets .]*

\_\_\_\_\_   
[insert bank's name, and address of issuing branch or office]

**Beneficiary:** *[insert name and address of Employer]*

**Date:***[insert date]*

**BID GUARANTEE No.:** *[insert number]*

We have been informed that *[insert name of the Bidder; if a joint venture, list complete legal names of partners]* (hereinafter called "the Bidder") has submitted to you its bid dated *[insert date]* (hereinafter called "the Bid") for the execution of *[insert name of Contract]* under Invitation for Bids No. *[insert tender reference number]*.

Furthermore, we understand that, according to your conditions, Bids must be supported by a Bid Guarantee.

At the request of the Bidder, we *[insert name of bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures expressed in the currency of the Purchaser's Country or the equivalent amount in an international freely convertible currency]* (*[insert amount in words]*) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the invitation document"); or
- c) having been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the Performance Security, in accordance with the invitation document.

This Guarantee shall expire: (a) if the Bidder is the successful bidder, upon our receipt of copies of the Contract signed by the Bidder and of the Performance Security issued to you by the Bidder; or (b) if the Bidder is not the successful bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder that the Bidder was unsuccessful, or (ii) twenty-eight days after the expiration of the Bidder's Bid.

Consequently, any demand for payment under this Guarantee must be received by us at the office on or before that date.

\_\_\_\_\_   
*[signature(s) of authorized representative(s) ]*

### 3. Form of Bid Security (Bid Bond)

*[If required, the **Surety/Bidder** shall fill in this Bid Bond Form in accordance with the instructions indicated in brackets.]*

BOND NO. *[insert Bond number]*

BY THIS BOND *[insert name of Bidder; if joint venture, insert complete legal names of partners]* as Principal (hereinafter called “the Principal”), and *[insert name, legal title, and address of Surety]*, **authorized to transact business in** *[insert name of country of Employer]*, as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[insert name of Employer]* as Obligee (hereinafter called “the Employer”) in the sum of *[insert amount in figures expressed in the currency of the Purchaser’s Country or the equivalent amount in an international freely convertible currency]* *[insert amount in words]*, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written Bid to the Employer dated the *[number]* day of *[month]*, *[year]*, for the construction of *[insert name of Contract]* (hereinafter called the “Bid”).

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

- 1) withdraws its Bid during the period of bid validity specified in the Form of Bid; or
- 2) refuses to accept the correction of its Bid Price, pursuant to the Invitation Document; or
- 3) having been notified of the acceptance of its Bid by the Employer during the period of Bid validity;
  - a) fails or refuses to execute the Form of Agreement in accordance with the Instructions to Bidders, if required; or
  - b) fails or refuses to furnish the Performance Security in accordance with the Instructions to Bidders;

then the Surety undertakes to immediately pay to the Employer up to the above amount upon receipt of the Employer’s first written demand, without the Employer having to substantiate its demand, provided that in its demand the Employer shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

The Surety hereby agrees that its obligation shall remain in full force and affect up to and including the date 28 days after the date of expiration of the Bid validity as stated in the Invitation to Bid or extended by the Employer at any time prior to this date, notice of which extension(s) to the Surety being hereby waived.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this *[insert number]* day of *[month]*, *[year]*

Principal: \_\_\_\_\_

Surety: \_\_\_\_\_

Corporate Seal (where appropriate)

\_\_\_\_\_  
[insert signature(s) of authorized  
representative(s)]

\_\_\_\_\_  
[insert signature(s) of authorized  
representative(s)]

\_\_\_\_\_  
[insert printed name and title]

\_\_\_\_\_  
[insert printed name and title]

#### 4. Performance Bank Guarantee [*Unconditional*]

[The **bank/successful Bidder** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets, if the Employer requires this type of security.]

[insert bank's name, and address of issuing branch or office]

**Beneficiary:**[insert name and address of Employer]

**Date:**[insert date]

**PERFORMANCE GUARANTEE No.:**[insert Performance Guarantee number]

We have been informed that [insert name of Contractor] (hereinafter called "the Contractor") has entered into Contract No. [insert reference number of the Contract] dated with you, for the execution of [insert name of Contract and brief description of Works] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we [insert name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [insert amount in figures] ([insert amount in words]), such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than twenty-eight days from the date of issuance of the Taking-Over Certificate, calculated based on a copy of such Certificate which shall be provided to us, or on the [insert number day of [insert month], [insert year], whichever occurs first. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

[signature(s) of an authorized representative(s) of the Bank]



## 5. Performance Bond

*[The Surety/successful Bidder providing the Bond shall fill in this form in accordance with the instructions indicated in brackets, if the Employer requires this type of security]*

By this Bond, *[insert name and address of Contractor]* as Principal (hereinafter called “the Contractor”) and *[insert name, legal title, and address of surety, bonding company, or insurance company]* as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[insert name and address of Employer]* as Obligee (hereinafter called “the Employer”) in the amount of *[insert amount of Bond]* *[insert amount of Bond in words]*, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Contractor has entered into a Contract with the Employer dated the *[insert number]* day of *[insert month]*, *[insert year]* for *[insert name of Contract]* in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

Now, therefore, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- 1) complete the Contract in accordance with its terms and conditions; or
- 2) obtain a Bid or bids from qualified bidders for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by the Employer to the Contractor under the Contract, less the amount properly paid by the Employer to the Contractor; or
- 3) pay the Employer the amount required by the Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of issuance of the Certificate of Completion.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its legal representative, this [*insert day*] day of [*insert month*], [*insert year*].

Signed by [*insert signature(s) of authorized representative(s)* ]  
on behalf of [*name of Contractor*] in the capacity of [*insert title(s)*]

In the presence of [*insert name and signature of witness*]  
Date [*insert date*]

Signed by [*insert signature(s) of authorized representative(s) of Surety*]  
on behalf of [*name of Surety* ] in the capacity of [*insert title(s)*]

In the presence of [*insert name and signature of witness*]  
Date [*insert date*]

## 6. Bank Guarantee for Advance Payment

[*Bank's Name, and Address of Issuing Branch or Office*]

**Beneficiary:** \_\_\_\_\_ [*Name and Address of Employer*]

**Date:** \_\_\_\_\_

**ADVANCE PAYMENT GUARANTEE No.:** \_\_\_\_\_

We have been informed that [*name of Contractor*] (hereinafter called "the Contractor") has entered into Contract No. [*reference number of the contract*] dated \_\_\_\_\_ with you, for the execution of [*name of contract and brief description of Works*] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum [*amount in figures*] ( \_\_\_\_\_ ) [*amount in words*] is to be made against an advance payment guarantee.

At the request of the Contractor, we [*name of Bank*] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [*amount in figures*] ( \_\_\_\_\_ ) [*amount in words*] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on its account number \_\_\_\_\_ at \_\_\_\_\_ [*name and address of Bank*].

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the \_\_\_ day of \_\_\_\_\_, 2\_\_\_, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

Yours truly,

Signature and seal:

Name of Bank/Financial Institution:

Address:

Date: